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A LEGAL HISTORY OF HEALTH PROFESSIONS IN ONTARIO

ONTARIO

A LEGAL HISTORY OF HEALTH PROFESSIONS IN ONTARIO

ELIZABETH MACNAB

A STUDY FOR

THE COMMITTEE ON THE HEALING ARTS

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FOREWORD

The Committee on the Healing Arts was established by the Province of Ontario, Order in Council 3038/66, dated July 14, 1966.

In March 1967, the Committee requested Mrs. Elizabeth MacNab of the Committee staff to undertake a legal history of health professions in Ontario. The following is a study prepared by Mrs. MacNab.

The statements and opinions contained in this study are those of Mrs. MacNab, and publication of this study does not necessarily mean that all such statements and opinions are endorsed by the Committee.

I. R. Dowie, Chairman
Horace Krever
M. C. Urquhart

PREFACE

Since this study is limited to an account of the historical development of licensing statutes in the healing arts, the major source is the various Acts and Regulations that have been passed. But a great deal of attention has been paid also to those Bills that have never passed through the Legislature and to those that have been substantially altered during their passage.

Until 1944 no official records were kept of the debates in the Legislature of Ontario. Therefore, the major source of comment by the legislators is the "Scrapbook Debates" — a collection, compiled by the Ontario Archives, of the accounts of the debates as they were reported in the *Globe*. These accounts are cited as the *Globe* with the date of the debate, rather than the date of the paper, since that is how they appear in the Scrapbooks.

I am indebted also to the Archives of the province, for a compilation published under the title "Ontario Archives". This seems to be the only record of the earliest legislation of the colony of Upper Canada.

Finally, I have made extensive use of the Minutes of the meetings of the various Colleges; for the accounts given therein show to some extent how the statutes were applied by those responsible for them.

E. MacN.

ACKNOWLEDGEMENTS

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I wish to acknowledge also the willing assistance given by the various Colleges in my search for sources, and the invaluable aid of Steven Risk in the preparation of these materials.

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Chapter 1 The Nature of a Registration Act

The organization of an increasing number of occupations in the healing arts is controlled by legislation. These statutes, known as Registration Acts, set up a system whereby an elected or appointed body is empowered to regulate the education, registration and professional behaviour of practitioners. They also set out the areas of privilege given the various professions (such as the right to practise or to use a specific title) and, generally, make it an offence for others to infringe these privileges.

The Regulatory Body

As a rule, the Acts do not themselves impose professional standards but provide for some body to which this task is delegated. While in some cases these Boards are appointed by the Lieutenant Governor in Council, usually such appointments are based on the recommendations of various interested groups within the profession. The professions themselves prefer that the statute incorporate all the qualified members of the profession into a College, which is governed by a Board or Council elected by and from the group which forms the College. Representation is usually on a territorial basis, with occasional provision for special interest groups within the profession. For example, hospital pharmacists are allowed to elect one representative for their specialty. Most Councils contain a number of appointed representatives as well. Educational bodies serving the profession usually are allowed to appoint a member, and often the Minister of Health is a member ex officio.

The Regulatory System

The purpose of the statutes is to ensure, through registration, that only those considered qualified can avail themselves of certain privileges relating to the practice of a given profession. Depending on the nature of these rights, registration can take one of three forms.

The first is licensure. In this case only registered practitioners are allowed to practise; all others are prohibited. The second, certification, gives those that are registered the right to claim this status (with the implication that they meet a certain standard of training) and permits others to practise in the same area, provided that they do not suggest that they are certified. The third, of which there is no instance in Ontario, is simple registration. Here, everyone who wishes to practise must register, but such registration carries no assurance of the practitioner's standard of education or competence.

As well as conferring practice privileges, the statutes usually also give registered practitioners the exclusive right to use certain titles, such as "Doctor" or "Registered Nurse".

The administration of the system of registration is vested in the regulatory body set up by the Act. This body has the right to make regulations concerning qualifications, although as a rule such regulations must be approved by the Lieutenant Governor in Council. Usually the registered practitioner must meet a certain educational requirement and must obtain pass standing in a registration examination set and administered by the Board. However, there are two situations where these requirements may not apply.

When the Act is first passed, many existing practitioners may not have the minimum education required of future registrants. To exclude them from the Act would be to deprive them of their livelihood; but on the other hand, the purpose of a licensing Act is to protect the public from incompetent practitioners. Moreover, it usually is passed at a time when a sufficient body of knowledge has accumulated within the profession to justify classifying the untrained practitioner as a quack. It is also true, however, that through the experience gained in actual practice, the untrained man has knowledge of his profession equal to that of the recent university graduate. Finally from a practical point of view, depriving most existing practitioners of the right to practise would result in an immediate shortage and a consequent reduction in the care available to the public. The question is how to distinguish between outright quacks and those who ought to be allowed to continue practising. Most statutes beg the question by inserting a "grandfather clause", which provides that anyone who has actually practised for a certain period at the time the Act is passed is entitled to registration on that basis alone.

The second exception to the standard requirements concerns those who are qualified to practise outside the jurisdiction of the Board and now wish to continue in their profession in Ontario. In the past this problem has been dealt with through reciprocity agreements. The Board might enter into an agreement with a Board in another jurisdiction that had a similar registration system, to register its graduates—provided that the same courtesy was extended to Ontario registrants. Recently, however, the number of applicants from jurisdictions with which reciprocity is not possible or desirable has increased. The problem of how to deal with these men has not yet been solved, although attempts have been made to provide special training courses and to set up programs whereby the Board may evaluate each applicant individually.

The actual administration of the registration system is carried out by a Registrar appointed by the Board. His duties include keeping the Register up to date and collecting the fees incidental to registration. Usually registration must be renewed each year by paying a fee, and often failure to pay will result in withdrawal of registration.

Since, under the Act, any infringement of privileges conferred by the system of registration constitutes an offence, the Board is empowered to prosecute any unauthorized practitioner. Commonly the Act provides that any penalty levied against the offender shall be paid to the Board.

In most cases, when a practitioner is challenged, the burden of proving that he is registered rests with him; but if he is registered, he has certain evidentiary advantages. A copy of the Register, or of the entry of the practitioner's name in the Register certified by the Registrar, will be accepted as prima facie evidence of registration, without his having to prove the signature of the Registrar or that the person signing is the Registrar.

Education

The most important aspect of a professional man's qualifications is his education, and most registration statutes give the Board considerable control over this. In most cases they are entitled to set out the curriculum to be followed by all registrants, and in many cases they are given the authority to operate a training school as well. In all cases, the Board is empowered to require that all applicants for registration pass an examination administered by it, as a final proof that they have a minimum knowledge of their profession.

Discipline

The final responsibility of the Board is to oversee the behaviour of its registrants while in practice. If this behaviour is "improper", the Board usually is empowered to penalize the miscreant. Most statutes do not define improper behaviour but leave it to the Board to determine. Penalties may range from a simple reprimand to suspension and ultimately complete erasure of registration with the resulting loss of privileges thus conferred. Although the disciplinary procedure varies, it always includes a formal hearing after notice to the offender, and some provision for an appeal to the courts.

In the chapters that follow, we will trace the development of statutory control over the various healing arts professions in Ontario.

Chapter 2 Physicians

Pre-Confederation

When it became a colony in 1791, Upper Canada (with the exception of a few centres such as Kingston and Niagara) was truly a frontier area. Settlement was sparse, and living was at a subsistence level. It was not a region to attract qualified doctors, for even if they had been physically able to cover a large enough area to make a living, few of their patients would have been able to pay them. In fact the majority of doctors in the colony were attached to the armed forces, and for the most part the rest were clustered in the few towns.

Such an environment would not be expected to encourage the growth of a licensing system which had traditionally been used to restrict practice in heavily populated areas.[1] Nevertheless, very early in the history of the new colony, attempts were made to license those who might practise. On September 24, 1792 a special Committee of the Assembly was named to consider "the most effective means of preventing persons not duly qualified from practising physic".[2] The Committee met that night and reported the next day that in view of the infant state of the province there should be no attempt to restrict the practice of medicine.[3]

Their advice was not followed, however. A Bill "to regulate the practice of physic in this Province" was passed through the Legislative Assembly in 1794 and sent on to the Council.[4] The Council suggested that a Joint Committee be appointed to study the measure; and although the appointments were made,[5] the Committee made no report and the Bill therefore lapsed.

The next year a similar Bill was presented and passed through both the House and Council to become law.[6] The preamble justified the measure on the grounds that "inconveniences have arisen to His Majesty's subjects in this Province from unskilled persons practising physic and surgery therein". A licensing Board was established by the Act. It was to be appointed by the Governor from among the qualified physicians in the colony, and its members were to examine anyone who wanted a licence to practise. Those without licences were prohibited from practice

[1]For example, the earliest licences in England gave the right to exclusive practice in an area that extended only seven miles from London. (1511) 3 Henry VIII, c. 11. An Act for the Appointing of Physicians and Surgeons.
[2]Ontario Archives, September 24, 1792.
[3]Ontario Archives, September 25, 1792.
[4]Ontario Archives, June 7, 1794.
[5]Ontario Archives, June 24, 1794.
[6]35 Geo. III, c. 1 (Upper Canada).

on pain of a fine of £100.[7] Most of the competent physicians were exempt from the Act's requirements, however, since neither military doctors, nor those with a degree from a university within the British Empire, nor those who had been practising in 1791 were required to have a licence to practise. Also exempt were female midwives.

By 1806 it was decided that this measure was "inexpedient in the present state of the Province" and that the proper remedy was to repeal it.[8] In spite of the acknowledged failure of this measure, new attempts at regulatory legislation soon followed. The first of these, in 1808,[9] failed to pass through the Legislature, but in 1815 a new Act was passed in substantially the same terms as the 1795 measure.[10] Like it, the new Act also was repealed on the grounds of impractability.[11]

Both these Acts were administratively and politically impractical. In the first place they did not suggest how they should be carried out. While the appointment of a Board of Examiners was provided for, no provisions were made concerning its size, when and where it should meet, or how it should conduct its examinations (i.e., how applicants should apply, and how often examinations should be held). Further, no exemption from the licensing provisions was allowed for those who had started to practise after 1791, and these men formed a small but politically powerful group. Finally, the problems of a scattered population and an inadequate supply of qualified doctors still existed.

The same Act that repealed the 1815 measure set up a new system of licensing which tried to solve the first two of these problems. The Board was to consist of five men and to meet twice yearly at York to examine all those who applied. Successful candidates were to be given a certificate which, when presented to the Governor, entitled them to a licence to practise, provided that they were found to be of good moral character.

The exemptions from licensure in the original Act were continued, and in addition a concession was made towards unqualified men who had practised for some time. Although they might still have to write a licensing examination, those who had been in practice since 1812 could not be required to do so until they had received twelve months' notice of the requirement through the *Upper Canada Gazette*.

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[7]The Act prohibited the unlicensed from practising medicine, surgery and midwifery and, as well, from prescribing for sick persons. This last may be the foundation for the later assumption of the courts that the practice of medicine must include the prescription of drugs.

[8]46 Geo. III, c. 2 (Upper Canada).
It seems unlikely that much effort was made to enforce the Act. An early medical historian has commented: "There is no record as to whether an examining Board was organized under the Act, but there is reason to believe that one was convened when necessary . . . . Contemporary accounts, however, show that few who practised were licensed." W. Canniff, *History of the Medical Profession in Upper Canada, 1783-1850*, W. Briggs, Toronto, 1894.

[9]Ontario Archives, March 5, 1808.

[10]55 Geo. III, c. 10 (Upper Canada).

[11]59 Geo. III, c. 13 (Upper Canada).

A Board was appointed under the Act in 1818 and immediately commenced its duties. During the first year sixteen candidates were examined, eight of whom were given certificates.[12] It was found, however, that this Act too created a number of administrative difficulties, and another Act was passed, less than a year later, in an attempt to correct them.[13] It had been found that two sittings a year were insufficient,[14] and so provision was made for the Board to meet quarterly. More important, the Act provided for the appointment of a permanent Secretary of the Board. This officer would give the Board administrative continuity: he would be available when the Board was not in session; he would have a record of its proceedings; and, finally, he would receive all applications for examination. Until his appointment, it had been uncertain to whom these applications were to be directed.

Although solutions had been found for most of the administrative problems, there still remained the social and political problems inherent in attempting to set up a licensing system in a frontier area. The next medical Act, which was passed in 1827,[15] attempted to lessen these difficulties. The measure instituted a radical change in the system in that it required that all practising doctors, except those serving in the armed forces, be licensed.[16] Provision was made, however, for those who formerly had been exempt to acquire a licence without undergoing an examination,[17] and similar provisions were made for those who had been in practice before 1812.[18]

The penal clause included in the old Acts also was revised. Practising without a licence had been declared an offence punishable by a fine of £100. Many must have thought this was an outrageous penalty for the "crime" involved, especially in areas where there was no authorized practitioner. Often no one would prosecute the offender, and if he was charged, generally he was found not guilty. Under the new Act authorized practice was to be merely a misdemeanour carrying a maxi-

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[12]W. Caniff, *op. cit.*, p. 38.

[13]59 Geo. III, c. 2 (2nd session) (Upper Canada).

[14]The preamble of the Act read:

> Whereas by s. 5 of 59 Geo. III. c. 13, the Board constituted and appointed by virtue of and under the authority thereof is required to be held at York on the first day of January and July in each year, and whereas much delay and inconvenience may arise from a limitation of the sittings of the said Board to these periods . . . .

[15]8 Geo. IV, c. 63 (Upper Canada).

[16]Female midwives continued to be exempt from licensure.

[17]Those who formerly had been exempt might obtain a licence by presenting to the Governor the diploma, armed forces commission, or prior licence on which their claim to an exemption had been based, together with an affidavit, sworn by a District Court Judge, that the deponent was the person named in the Diploma.

[18]In order to obtain a licence, those who based their claim to a licence on the fact that they had been practising in the colony before 1812 had to present the Governor with a certificate to that effect signed by a Magistrate, by the Chairman of the quarter-sessions, and by the clerk of any district in the province. In addition he must present a certificate from three licensed doctors within the province stating that they were acquainted with the applicant and felt he was competent to practise.

mum penalty of a twenty-five-pound fine or six months' imprisonment. A limitation period of one year was raised against these prosecutions; but if a practitioner were prosecuted, the burden was on him to prove his right to practise.

During this period the number of practitioners in the province was growing,[19] and after 1827 they began to make more and more demands for legislation. In 1833 a petition was presented for the inauguration of the Medical Society of Upper Canada.[20] By 1835 practitioners in London were asking for a District Medical Board to examine candidates from that area.[21] And during this period the colony attracted so many British doctors that in 1836 the Royal College of Surgeons of Edinburgh sent a petition to the Legislature asking that its members be considered qualified for licences.[22]

Although the 1827 Act was the most effective yet passed, it certainly did not meet with universal approval. Between 1828 and 1835, at least six Bills aimed at amending the Act were proposed,[23] and in 1839 the members of the Board of Examiners presented a petition asking "that the Medical profession may be placed on a more honourable and favourable footing".[24] Possibly as a result of this petition,[25] an Act was passed that year that once again set up a new system of governing doctors within the colony, this time by creating the College of Physicians and Surgeons of Upper Canada.[26] The College, consisting of all those qualified to practise in the colony, was to be governed by its "Fellows", the first of whom were

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[19]Between 1830 and 1836, 100 (out of 164 candidates) were given certificates by the Board. W. Caniff, *op. cit.*, p. 103.

[20](1833) Journals of the Legislature of Upper Canada, p. 19.

[21](1835) Journals of the Legislature of Upper Canada, p. 121.

[22](1836) Journals of the Legislature of Upper Canada, p. 187. A Bill to the same effect was presented the following year but was not proceeded with. (1837) Journals of the Legislature of Upper Canada, p. 60.

[23](1828) Journals of the Legislature of Upper Canada, p. 51.
(1829) Journals of the Legislature of Upper Canada, p. 11.
(1831) Journals of the Legislature of Upper Canada, p. 43.
(1831-32) Journals of the Legislature of Upper Canada, p. 21.
(1833-34) Journals of the Legislature of Upper Canada, p. 106.
(1835) Journals of the Legislature of Upper Canada, p. 121.

[24](1839) Journals of the Legislature of Upper Canada, p. 12.

[25]The preamble of the Act states:

> Whereas [The Board] have by their petition amongst other things represented that the Laws now in force in the Province regulating the practice of the medical profession, and for the prevention of persons practising without licence have been found very inadequate and have prayed that such alterations and amendments may be made in the existing laws as may be most conclusive to the interests of the Medical profession and the public at large and Whereas it is highly desirable that the profession of medicine in this Province should be placed on a more respectable and efficient footing and that a more summary mode should be provided for the conviction and punishment of persons practising without a licence . . . .

[26]2 Vic., c. 38 (Upper Canada).

named in the Act. Unlike the practice in most modern Colleges, only the Fellows could elect additional Fellows. Anyone who wished to practise must become a member of the College by passing an examination set by the Fellows.[27]

The Act also simplified the procedure for prosecuting unauthorized practitioners. Now trials were to take place before a Justice of the Peace on his summons, and conviction would be based upon the testimony of one credible witness. The fine was further reduced to five pounds and was declared payable to the College.

Although this Act went far towards meeting the demands of the profession, their satisfaction was short lived, since on December 29, 1840 it was disallowed by Queen Victoria,[28] apparently because the Royal College of Surgeons of London felt the colonial College infringed on its rights.[29] Once against the Act of 1827 was in force, and it remained in effect until 1865 in spite of many attempts to alter it.[30]

In the first half of the nineteenth century, academic medical education began in Upper Canada. Early medical education in North America was by apprenticeship. A student was articled to a practitioner, and all his medical knowledge was gained from this man. Some of these "preceptors" became very well known and attracted large numbers of students; and some eventually established medical schools. A number of such schools, some operating within universities, were operating in the United States by the 1820's, and most Canadian students attended them for a part of their education.[31] The profession encouraged this trend towards academic study[32] and was anxious to establish a medical school in Canada. The first, the Medical Institute of Montreal, was founded in 1824, becoming part of McGill University four years later.[33] Upper Canada, which had a sparser population, was much slower to provide educational facilities, establishing its first school, King's College, in 1843. Other schools followed swiftly, however, and by 1865 there were five institutions authorized to grant medical degrees.

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[27]The exception in favour of military doctors and university graduates was continued. They were still entitled to a licence on proof of identity. There was, however, no exemption in the Act concerning midwives.

[28]*Upper Canada Gazette,* January 7, 1841.

[29]W. Caniff, *op. cit.,* p. 152.

[30]Bills aimed at re-establishing the College were presented in 1845, 1846, 1849, 1851 and 1860. (1845) Journals of the Legislature of the Province of Canada, p. 171. (1846) Journals of the Legislature of the Province of Canada, p. 208. (1849) Journals of the Legislature of the Province of Canada, p. 108. (1851) Journals of the Legislature of the Province of Canada, p. 74. (1860) Journals of the Legislature of the Province of Canada, p. 88. In addition a great many petitions on the matter were sent to the Legislature by the profession. A portion of the earlier ones were against incorporation, but by 1850 most were in favour of the idea.

[31]W. Caniff, *op. cit.,* p. 53.

[32]In 1830 the Board rejected a candidate because he could not show that he had attended any lectures on medicine. W. Caniff, *op. cit.,* p. 58.

[33]W. Caniff, *op. cit.,* p. 54.

Although the Board of Examiners had encouraged academic education, conflict soon arose between it and the schools. Generally speaking, the profession felt it should control entry into practice, and graduates of the schools were exempt from licensing, being graduates of universities within Her Majesty's Dominions.[34] Thus, after 1844, the Bills presented to the Legislature sought to control the *study* and practice of medicine. The schools, on the other hand, tried to influence the Legislature in their favour. In 1840 students at the Toronto School of Medicine petitioned for exemption from the current Bill,[35] and by 1850 the schools had supporters in the House who sponsored measures on their behalf.[36]

This period was marked also by experimentation and development in medical theory throughout the world. Because some of the new theories were not accepted by the more orthodox practitioners (or allopaths, as they came to be called by their detractors), the followers of these methods broke away to form numerous splinter branches of medicine. It is perhaps symptomatic of the growing acceptance of medical licensure in the colony that many of these groups desired the status of a governing statute for themselves.[37]

In Ontario, the most numerous of the unorthodox groups were the homeopaths[38] and eclectics. Although several others (including, notably, the botanics[39]) sought the recognition of the Legislature, only these two groups achieved it — the homeopaths in 1859,[40] and the eclectics in 1861.[41]

The Acts recognizing these groups were almost identical; and both were similar to the Medical Act in that a Board was appointed to examine candidates who gave proper notice of their desire to be examined, and to grant the successful ones a certificate which would be the basis of the grant of a "licence" by the Governor. There were, however, two important aspects of the Acts which reflected the changes in attitude that had taken place since 1827. The change in medical education, both in the move from an apprenticeship system to an academic discipline and in its availability, was reflected in the requirement that each candidate have

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[34]The Board probably also resented the schools because they attracted the pupils who had formerly been apprenticed to the Board.

[35](1846) Journals of the Province of Canada, p. 176.

[36](1850) Journals of the Province of Canada, p. 260.

[37]There were, however, groups who favoured "free competition in medicine" and others who felt that all groups should be unified under one Act. (1852-53) Journals of the Legislature of the Province of Canada, petitions on pp. 185, 339 and 619.

[38]Homeopaths believed that diseases could be cured by giving minute doses of drugs that in larger amounts would cause the patient to develop symptoms of the disease being treated.

[39]Petitions on behalf of this group: (1843) Journals of the Legislature of the Province of Canada, p. 42; (1847) Journals of the Legislature of the Province of Canada, p. 78; (1849) Journals of the Legislature of the Province of Canada, p. 56.

[40]22 Vic., c. 47 (Canada).

[41]24 Vic., c. 110 (Canada).

completed four years of medical studies, including two years at a medical school.[42] The other important feature was that subsequent Boards were to be elected at two-year intervals by those holding appropriate licences, thus giving the group one characteristic of a professional College. Members of the Medical Board were still appointed by the Governor.

On the other hand, these Acts lacked some of the provisions of the Medical Act. Although the Governor purported to grant a "licence", there was no clause that prohibited the unlicensed from practising. Since homeopathy and eclecticism were considered part of medicine, however, those who practised without a licence might still be prosecuted under the Medical Act. In addition, there was no grandfather clause, and so all existing practitioners (except for members of the Boards) would have to meet the academic requirements and write qualifying examinations. This ruling was not so unfair as it might seem, since there were not many practitioners of either persuasion in the colony and most of them were on the Board.

The Act of 1865

The Acts governing homeopaths and eclectics indicated how greatly conditions had changed since 1827. There had been an increase in both the number of doctors available and the quality of their services. Because of these advances the Medical Act became more acceptable and easier to enforce, but its provisions were out of date. For example, it made no reference to education, although almost all training practitioners attended some lectures. Further, it must have been galling to the orthodox practitioners to find that "irregulars" could elect their own Boards, while they had to be content with those appointed by the Governor.

The inevitable re-enactment, which came in 1865,[43] represented a compromise between the demands of the profession and the growing influence of the universities. Administrative power was placed in the hands of the General Council of Medical Education and Registration for Upper Canada. Representatives to the Council were to be elected by registered doctors, one from each of twelve territorial districts. In addition each educational body empowered to grant medical degrees[44] was entitled to appoint a representative who must be registered under the Act.

The Council was to appoint a Registrar whose chief duty was to keep a record of all those medical practitioners who were licensed to practise in Upper Canada, and to publish a list of their names each year.[45] The basis of registration was

[42]The only major difference between the Homeopaths' and Eclectics' Acts was that the eclectics required candidates for their examinations to have spent one year training at a hospital as well as two in a medical school.

[43]29 Vic., c. 34 (Canada).

[44]At this time there were five: the University of Toronto, Queen's University, Victoria College, Trinity College and the Toronto School of Medicine.

[45]To make this task possible the Registrar was given the right under the statute to ask each registrant for such information as his address, and so on and, if no reply was received within six months, to erase his name from the Register. Also names were erased on death, and it was the duty of each territorial representative to inform the Registrar of any deaths in his territory.

changed, however; it no longer depended on passing an examination set by the Council, but rather on a certificate of qualification issued by one of the educational bodies represented on the Council.[46] Further, registration was available on the same grounds to those entitled to it under earlier Acts,[47] but the exception in favour of midwives was dropped.

Thus, although the Council was the sole licensing authority, licensing became a mechanical function based on other qualifications, and the Council held no authority to judge a candidate's qualifications as the old Medical Board had done through its examinations. This lack was compensated to some extent by the control it was given over medical education in the province. It could set standards of preliminary education for medical students, and it could fix the curriculum to be followed by the medical schools.[48] The schools were required to give the Council such information regarding their curriculum as it required and to submit to inspection by Council members or deputies. If the Council judged that the proper curriculum was not being observed, it could so represent to the Governor in Council, who could, in turn, authorize the Council to refuse registration to those presenting certificates of qualification from that school. As well as ensuring that its curriculum was followed, the Council was to guarantee independence of medical thought. If it felt that any school was trying to force its students to follow any particular theory of medicine, it was to order the school to refrain from so doing; and if not obeyed, it was to go to the Governor in Council, who would make the same order in the form of an injunction.

Registration also served an evidentiary function. In any action where a practitioner's licence to practise was in question, the presence of his name in the Register was prima facie evidence of the licence. If his name was absent, the assumption would be that he was unqualified, but this could be corrected by the production of a copy of his registration certified by the Registrar.

The Act launched a new attack against unauthorized practitioners by setting out the privileges that only those registered were entitled to exercise. The most important privilege was the right to practise and prescribe, and to charge fees for these services. The Act made it clear that unregistered men could not use the

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[46]The Act provided also that the bodies involved could send lists of those they had qualified to the Registrar, who could forthwith register those named without any further application.

[47]These were as follows:

1) those licensed under earlier medical Acts;
2) those licensed in Lower Canada under certain Acts;
3) those holding a medical degree from any university in Her Majesty's Dominions;
4) those holding a licence from the Royal College of Physicians or the Royal College of Surgeons in London;
5) those holding a commission as a physician or surgeon in the armed forces;
6) those holding a certificate under the Imperial Medical Act (21 & 22 Vic., c. 90).

[48]These regulations, of course, had to be approved by the Governor in Council and gazetted.

courts to recover fees for such services. Further, only those on the Register were entitled to an appointment as a medical officer in the provincial service, or in any hospital or the militia, and only they could give a certificate that was required to be signed by a doctor. In addition the Act imposed penalties upon any person who falsely procured registration or falsely implied in any way that he was registered under the Act.[49] The fine for unauthorized practice was increased to $100 payable to the Treasurer of the Council.[50]

The Act of 1869[51]: the College of Physicians and Surgeons of Ontario

It was soon apparent that the Act of 1865 could not satisfy the profession. Although they had control over the curriculum followed by the medical schools, they felt it an inadequate substitute for a universal qualifying examination. This dissatisfaction, coupled with the convenient excuse that the Act did not provide for future elections of Council,[52] led to the introduction of a Bill to establish an Examining Board to test all applicants seeking a licence. The measure finally passed, however, accomplished much more than this end; it united the orthodox profession with the homeopaths and eclectics, and established the College of Physicians and Surgeons of Ontario.

All three branches of the profession were agreed that it was undesirable to have three separate licensing Boards. Each realized that in such a situation the standards of one Board might be lower than the others, consequently attracting more applicants. In extreme cases competition might develop as to who would impose the lowest standards. The General Council had discussed amalgamation to avoid this eventuality, although no efforts to achieve it had ever been set in motion.[53] When the Bill was introduced in 1868, the lack of any provision con-

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[49]This prohibition included the use of any title or description that normally would be taken to indicate registration, including the word "physician" or the letters "M.D." (s. 34).

[50]The sanctions imposed against such an offence do not seem to have been much of a deterrent. A letter in the *Globe* of November 23, 1868 illustrates this attitude. The writer, a doctor graduated from Victoria Medical School, was convicted of practising without registering and fined twenty-five cents. He refused to pay this amount. Two months later he was served with a warrant of committal, but it was withdrawn on the eve of its exercise, and the doctor continued to practise.

[51]S.O. 1869, c. 45.

[52]*Globe,* Toronto, November 26, 1868. In his explanation of the Bill at second reading, Dr. McGill said in part:

> . . . perhaps the profession might not have asked for an amendment of the existing law at present, had it not been that by an oversight, there was no provision for future elections of the Medical Council . . . and it had been thought that in remedying this oversight, it would be an opportune occasion for making some further slight amendments to the Act . . . . Almost the only difference worth referring to, was that in this Bill they asked for the establishment of a Central Board of Examiners through which all who might hereafter enter the profession should go, in order that there might be a higher standard than now prevailed.

[53]Minutes of CPSO, July 14, 1869 (taken from *Canada Medical Journal,* Vol. 6, p. 17).

cerning homeopaths and eclectics aroused such comment that its sponsor, Dr. McGill, felt it necessary to explain the omission when it came up for second reading. He said that

> He would explain why the representation of Homeopaths and eclectics on the Board was not provided for. The promoters of the Bill did not seek to interfere with those gentlemen, but they would be more than happy to allow them to enter the Council and to be registered along with themselves after an examination on all the subjects with which all who presumed to practise medicine should be familiar . . . . If this had been proposed in the Bill, however, it might have been represented as a case of severe persecution. But if these gentlemen could be induced to come in, those whom he represented would, as he had said, be more than happy to meet them.[54]

Both groups immediately indicated that they would be happy to come under the measure, with the result that a completely amended Bill was presented to the Committee of the Whole.

The most fundamental change was not directly connected with amalgamation, but rather was concerned with the organization of the profession as a whole. The original Bill merely continued the old Council; the amended one fulfilled an old hope by establishing a professional College. The members were to be those registered under the 1865 Act, together with those who would be registered under the present enactment. The College was to be governed by a Council composed in the same manner as the General Council of Medical Education and Registration for the Province of Ontario, with the addition of five homeopaths and five eclectics, who were to be elected at large by their members within the College.[55]

The most important new power given to the College was to administer licensing examinations which must be passed before the applicant could become a member of the College. Although the Council was to prescribe the subjects of examination and the time and place where they were to be held, the examinations were to be actually prepared and administered by a separate Board of Examiners. This Board was appointed by the Council from among the members of the College.

The Council also retained a large measure of control over medical education. It could still set matriculation standards for entrance into the medical schools and

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[54]*Globe*, Toronto, November 27, 1868.

[55]The suspicion in which the teachers at the medical schools were held by the practising members of the profession was illustrated during this period. Two letters appeared in the *Globe* (December 12 and 16, 1868) arguing that teachers be allowed on the Council only as school representatives and not as elected territorial representatives, otherwise teachers might come to outnumber the practitioners on the Council. In response to this outcry, a provision was inserted in the Act which limited teachers to representing the schools at which they taught.

prescribe the curriculum to be taught therein. The powers of inspection and enforcement given in the 1865 Act concerning the curriculum were omitted, however.

The registration method of licensing was continued under this Act.[56] Registration was available to those who passed the Council's examinations and to all those who had been registered under the 1865 Act, the Homeopathic Act and the Eclectic Act. In addition a fairly complicated grandfather clause was inserted. It allowed those who had been actually in practice since 1850 to register — provided, in the case of orthodox practitioners, that they had practised in Ontario throughout this period and had attended at least one course of medical lecures; and in the case of homeopaths and eclectics, that they had practised in Ontario for the last six years of the period. Although such men faced no educational requirement, they had to be recommended by the representatives of their classification on the Council.

There was also a provision that allowed anyone who could within six months of this Act's passage achieve any of the qualifications for registration under the 1865 Act to register on that basis. After this six-month period, however, all the old bases of registration (such as graduation from a university within Her Majesty's Dominions) ceased to exist, and entry to practice depended on passing the licensing examinations. There was, however, a new provision that allowed Ontario to make agreements with other jurisdictions regarding reciprocal registration. If another province had a single authority that issued licences to practise when the applicant had completed a curriculum similar to that followed in Ontario and subsequently passed examinations of the authority, each province might agree to register the other's licences without further examination.

Early Years of the College

Relations with Homeopaths

Although the unification of the three major branches of medicine in Ontario was greeted with approval by the public[57] and the profession alike, it was not to be expected that the three groups would all at once begin to live together in harmony. The first opposition came from the orthodox practitioners. In a letter to the *Globe* on January 23, 1869, one such "allopath" argued that instead of raising the standards of medical practice, union would drag the standards down to the lower level of the unorthodox doctors. At the first meeting of the Council on July 14, 1869, the first order of business, after the officers were elected, was a debate on a motion to request a repeal of the Act on the grounds that it was "horrendous" to

[56]The Registrar continued to be the administrative officer. His powers and duties remained the same, except that he was required to publish the Register periodically rather than annually.

[57]See editorial in the *Globe,* Toronto, January 15, 1869, which congratulated all groups for forgetting their differences and coming to an agreement that would benefit both the public and the profession.

most of the profession, and that it had been passed without giving the profession a chance to comment upon it. After some debate, however, the motion was amended to provide that, in spite of the objections of some members of the Council to the Act in its present form, all would use their best efforts to make it work for the improvement of the profession and the protection of the public.[58]

The homeopaths and eclectics, who had gained status with the new Act, did not oppose its principle but soon began to find various aspects of it unfair. The first objection concerned the examination provisions. At the first meeting, Dr. Campbell, the homeopaths' leader, objected to students of his persuasion being forced to write certain examinations that were to them irrelevant. After some debate, he withdrew the objection but continued to seek redress by having a remedial Bill introduced in the Legislature.[59] This Bill provided for homeopathic and eclectic representation on the Board of Examiners and, after setting out the subjects of examination, provided that students should be examined exclusively by practitioners of the school they intended to follow. The Bill also set out a method of electing homeopathic and eclectic representatives, and provided stiffer penalties for unauthorized practice.

In the Legislature the sponsor of the Bill, McMurrich, explained that its purpose was merely to correct omissions in the first Act (such as the method of electing homeopathic representatives); but it was fiercely debated, opposition coming mainly from those members who were doctors. After a motion to give it a six months' hoist was defeated, it was referred to a Special Committee composed of all the doctors in the House.[60] When it became clear that the Committee would not report the Bill in a form acceptable to the homeopaths, it was withdrawn at their request.[61] One result of this attempt at legislation was that at the next meeting of the Council,[62] a resolution was passed setting up a Legislation Committee to consider any amendments that might be necessary, and expressing the feeling that such amendments should be sponsored by the College.[63]

In 1870 the Council published its first regulations as to the requirements to be met by those seeking to write its examinations. First, each had to pass the matriculation examinations set by the Board and then spend four years in studying medicine. These studies were to include three six-month sessions at a medical school, two six-month periods and one twelve-month period in the office of a regularly

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[58]The account of the first meeting is found in the *Canada Medical Journal*, Vol. 6, p. 17. The *Journal* expressed its own disapproval of the union on p. 47 of that volume.

[59](1869) Third Session of the First Parliament of the Province of Ontario, Bill 97.

[60]*Globe*, Toronto, December 9, 13, 1869. A hoist was a device whereby the next reading of a bill was postponed for six months; by the end of this period the session would be over.

[61]*Globe*, Toronto, December 21, 1869.

[62]April 19, 1870.

[63]As a result a Bill was presented in 1872 (No. 151), increasing the penalties for unauthorized practice and providing for changing classification in the Register to homeopathic or eclectic. This Bill was withdrawn. (1872) Journals of the Ontario Legislature, pp. 202, 243.

qualified practitioner, and a twelve-month period in a hospital.[64] Graduates from schools in the United States were required to attend two courses of lectures in an Ontario school, plus any other lectures that were necessary to ensure that they met the required curriculum. Since there were no homeopathic[65] schools in Canada, this requirement was seen as a device to harass its students. As it was pointed out in a letter from Dr. Campbell to the *Canada Lancet*,[66] "[Homeopathic and Eclectic] students are compelled to pay exactly double for their education that the students of the 'general' school do." At the meeting of 1871 the homeopaths moved that such students be compelled to attend only one lecture course in Ontario. This motion was hotly debated with bad feeling on both sides and was defeated.[67] As a result Dr. Campbell threatened to withdraw the homeopaths and eclectics from the Council and to ask the Legislature to restore their separate status.[68]

This threat led to a certain amount of consternation within the profession. Although the Council had appointed an Executive Committee, such a committee was not authorized by the Medical Act and its members felt they had no authority to do anything that could remedy the situation.[69] They did, however, call a special meeting which was held in January 1872. Although a certain segment of the profession recognized the justice of the homeopath's claim,[70] the President at that time felt that no concessions should be made to any one branch, and his counsel was followed.[71] At the annual meeting in August of that year, however, the homeopaths prevailed and their students were subsequently obliged to attend only one course in Ontario.[72] Thus was harmony achieved and through the resulting goodwill Dr. Campbell was made Vice-President of the Council.

The new-found harmony was not to last. After meeting among themselves in 1873 the homeopaths gave notice of their intention to quit the Council,[73] and instead of attending the meeting of 1874 they sent a letter reiterating their resignation. In the letter it was stated that they intended ". . . to abstain from presenting themselves at any meeting of the Council until full justice is done by the said Council to Homeopathy, both in the matter of examination of students and of equality of rights of their representatives in the Council, satisfactory to the general

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[64]Announcement 1870 .

[65]We will omit eclectics henceforth, since no eclectic student ever presented himself to the Council.

[66]*Canada Lancet*, Vol. 4, p. 117.

[67]There are no minutes of this meeting available, but an editorial in the *Canada Lancet, ibid*, pp. 130-131, mentions this resolution.

[68]See letter in *Canada Lancet, ibid.*, p. 117.

[69]*Canada Lancet, ibid.*, p. 187.

[70]See editorial in *Canada Lancet, ibid.*, p. 130, which comments that since Council had made this regulation, it should do something to heal the breach.

[71]*Ibid.*, p. 203.

[72]*Ibid.*, p. 543.

[73]See letter printed in Minutes of CPSO, 1874.

body of Licentiates in Homeopathy in Ontario."[74] Apparently, the unequal treatment in Council that was objected to was that Dr. Campbell had not later been elected President in accordance with the custom of electing the Vice-President to that office.

This time the homeopaths actually attempted to carry out their threat, and a Bill was introduced on their behalf which sought to incorporate a Homeopathic College of Physicians and Surgeons of Ontario with privileges similar to that of the existing College.[75] At the same session, however, a Bill was introduced to amend the Medical Act.[76] The changes made seemed to satisfy the demands of the homeopaths; for their Bill was not proceeded with and they attended the next annual meeting.[77]

Unregistered Practitioners

The second major issue that threatened the efficacy of the College in its early years was the old problem of unauthorized practitioners. From its first meeting, the Council showed that it intended to make a strong attempt to deal with this problem. One of the first resolutions passed was the appointment of a public prosecuter in each territorial division to enforce the Act.[78] It was the unauthorized practitioner who seemed to have the sympathy of the courts, however. In 1870 it was reported to the annual meeting that a judge had refused to prosecute in such a case.[79] Another aspect preventing effective enforcement of the Act was that 500 or so practitioners who had been licensed under earlier Acts refused to register under the new one. Some claimed that their original licence gave them a vested right to practise; others refused to ally themselves with a combined Board.[80]

1874-1887

The 1874 Act[81]

By 1874 most of the defects in the Medical Act had become apparent, and the measure was re-enacted in an attempt to overcome them.

Administration

A number of administrative changes that had been proposed in Bills presented after 1869 were included in the new Act. A system of voting for homeopathic

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[74]Minutes of CPSO, 1874.

[75](1874) Third Session of the Second Parliament of the Province of Ontario, Bill 108.

[76]S. O. 1874, c. 30.

[77]Although the new Act dealt only with their educational demands, the charges of unfair treatment also were disposed of; in 1879 Dr. Campbell was made President.

[78]*Canada Medical Journal,* Vol. 6, p. 17.

[79]Minutes of CPSO, 1870, *Canada Medical Journal,* Vol. 6.

[80]*Ibid.*

[81]S. O. 1874, c. 30.

members of the Council was provided,[82] an Executive Committtee was authorized to deal with matters arising between Council meetings,[83] and a method of determining disputed elections was introduced.[84]

This Act also provided for the establishment of divisional associations for each territory. These associations were entitled to submit a tariff of fees to the Council, which, if approved, would constitute the "reasonable charge for services" that, under the Act, doctors could recover in the courts.

One omission in the re-enactment was that of the provision for eclectic representation on the Council. This group had been declining in number ever since the Eclectic Act had been passed in 1861, and since the formation of the College no eclectic student had presented himself at the licensing examinations.[85] Thus, with the group's consent, there was to be no eclectic representation after the present Council finished its term.

The most significant provision added by the Act concerned the levy of an annual fee. Not surprisingly, the Council was in need of funds. It had always been entitled to charge fees for registering and writing examinations, but these sources did not produce enough revenue. In 1873 the Council presented a Bill asking the Legislature to authorize the imposition of an annual fee upon the College membership.[86] Although the Bill was not passed, the 1874 measure provided that the Council might levy an annual assessment of one dollar, and a resolution instituting this fee was passed at the next Council meeting.[87] It was dispute over these fees that later led to the widest split among its members that the profession had ever known.

Registration

A new grandfather clause was inserted into the Act in an attempt to encourage all those who were qualified to register. The period under which the 1865 qualifications were sufficient was extended from July 23, 1869 to July 23, 1870. All those who were registered under previous Acts were entitled to transfer their registration without paying a fee. Finally it was made clear that those who were entitled to register but had not done so within six months of the passage of the Act could be treated as unauthorized practitioners.

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[82](1872) First Session of the Second Parliament of the Province of Ontario, Bill 151, s. 4.

[83](1869) Third Session of the First Parliament of the Province of Ontario, Bill 97, s. 2.

[84](1873) Second Session of the Second Parliament of the Province of Ontario, Bill 70, s. 8.

[85]Nor had any homeopathic student, but it was believed this was due to discrimination. See Dr. Campbell's letter, *Canada Lancet*, Vol. 4, p. 117.

[86](1873) Second Session of the Second Parliament of the Province of Ontario, Bill 70.

[87]Minutes of CPSO, June 1874.

Penalties

Although it was hoped that the new registration provisions would encourage all qualified men to register, the Act also contained new provisions aimed at preventing untrained men from practising. Since 1869 the profession had sought to have the offence apply only in cases of actual practice, thus obviating the need to prove that the defendant had falsely led the patient to believe that he was licensed.[88] The 1874 statute further made it an offence to practise if it were " for hire, gain or hope of reward".

Education

Finally the new Act attempted to meet the grievances of the homeopaths. It provided that, although such students must complete the full curriculum prescribed by the Council, they could do so under the supervision of a registered homeopath and could spend the required time at lectures and hospitals in homeopathic institutions in the United States. The provisions concerning licensing examinations and examiners also were changed, stating that homeopathic students would not be required to take certain examinations unless the examiner was approved by the homeopathic representative on the Council.

Events after 1874

Unauthorized Practice

Once the Act had solved to a great extent its internal difficulties, the Council was free to turn its attention to the problem of eradicating the large numbers of unauthorized practitioners. How best to accomplish this was the first order of business at the 1875 meeting. A series of resolutions was introduced suggesting that various persons, ranging from tavern inspectors to each individual doctor, take the responsibility of prosecuting practitioners who were not registered; but it was finally decided that the Executive Committee should appoint a prosecutor for each county on the recommendation of the territorial representative.[89] This system was too cumbersome to be practical, however, and the next annual meeting opened with the President calling for more stringent prosecution of quacks.[90] At this meeting it was decided to appoint one Official Prosecutor for the whole province. He was entitled to keep any fines imposed as a result of his labours, but he also had to pay all the expenses involved in the prosecution. This system proved effective and remained in operation until 1896.[91] Individual physicians too were encouraged to

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[88](1869) Third Session of the First Parliament of the Province of Ontario, Bill 97, s. 41 (12). (1872) First Session of the Second Parliament of the Province of Ontario, Bill 151, s. 9. (1873) Second Session of the Second Parliament of the Province of Ontario, Bill 70, s. 22.

[89]Minutes of CPSO, July 1875.

[90]Minutes of CPSO, June 1876.

[91]In fact it was sometimes too effective. In 1881 the first prosecutor resigned over criticism of his extreme zealousness in prosecuting some nurses who occasionally had acted as midwives.

prosecute unlicensed men, and in 1877 a section of the Annual Announcement was devoted to instructions to the profession on how to carry out such an action.[92]

Discipline

The Council was concerned also with the conduct of its members. In 1877-1878 the Annual Announcement included a "Reminder on the Penal Clause", which asked any member to communicate with the Registrar if he knew of any doctor who had committed a felony or gained his registration by false representation.

One of the distinguishing marks of a profession is the code of ethics observed by its practitioners. As this code develops, means of ensuring its observance are sought. Most of these methods are informal and imposed by individuals within the profession, ranging from simple ostracism to expulsion from professional organizations; the most effective method, however, is some official sanction imposed by the profession's governing body. In 1886 the College made its first bid to obtain such punitive power over its members. A Bill was presented that provided that the name of a practitioner could be erased if he had "been guilty of any infamous or disgraceful conduct in a professional respect".[93] This Bill, however, was withdrawn so that a more comprehensive enactment could be introduced the following year.

Registration

The 1874 Act had authorized the Council to make regulations providing for the registration of British practitioners,[94] but it was reluctant to exercise this power until Great Britain would register members of the Ontario College.[95] Another reason for this reluctance was that Ontario students could register in Great Britain if they could pass the British licensing examinations, which were of a lower standard than those in Ontario.

Some Council members felt that it would be unfair to those students who remained in the province to pass regulations that would allow those who had avoided the Ontario examinations to register.[96] On the other hand, a large part of the population felt that such students should be registered. Thus in 1877 a Bill was presented that provided that any graduate of a Canadian medical school who was registered in Great Britain was entitled to Ontario registration

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[92]For example, the instructions warned them to be certain that registration was proved only by production of the Register. Advertisements could be used to prove that the defendant had assumed an improper title or had pretended to be registered. The announcement also warned that if unauthorized *practice* was the charge, then proof of payment to the defendant would have to be given. This section ended with advice on the proper laying of a charge and conduct of an action.

[93](1886) Third Session of the Fifth Legislature of the Province of Ontario, Bill 170, s. 6(1).

[94]*Ibid.*, s. 22.

[95]Minutes of CPSO, July 1877.

[96]At the annual meeting of 1878 it was resolved that even if British doctors were allowed to register, Ontario students intending to practise in Ontario would be required to take Ontario examinations even if they were registered in Great Britain.

on application.[97] This measure aroused such opposition from the profession, however,[98] that it was withdrawn. At last the British Parliament took action and passed another Imperial Medical Act which provided that any British-registered doctor might practise in any British Dominion, whether or not it had registration legislation of its own. The first reaction of the Ontario profession was to cause a Bill to be introduced providing for a registration fee of $400 for doctors registering under this Act. During the debate, however, it was decided that the more appropriate course would be to make their feelings known to the Imperial Parliament by a resolution transmitted through the Lieutenant Governor.[99]

Representation on the Council

Within the Council, once again antagonism arose between practitioners and teachers. In 1877 the representative of Trinity Medical School, which claimed to be distinct from Trinity University,[100] was refused admittance to the meeting. The representative, Dr. Grekie, instituted an action to compel his admittance[101] and was present at the next meeting. This incident led to a reconsideration of the composition of the Council, and Dr. Grekie was the first to suggest that in view of the increasing number of medical schools, the number of territorial representatives should be increased.[102] Although this resolution was defeated, the next year a Special Committee[103] was set up to investigate the possibility of increased territorial representation. A second Committee was appointed to advance this proposal to the Legislature, but after further discussion it was decided to ask instead that the number of academic representatives be reduced.[104] In any event it was not for

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[97](1877) Second Session of the Third Parliament of the Province of Ontario, Bill 98.

[98]See (1877) Journals of the Ontario Legislature, pp. 16, 24, 28, 32, 53, 93, 101, and 109, for petitions presented against the Bill.

[99]*Globe*, Toronto, March 11, 1879.

[100]Trinity University was entitled to a seat in the Council since it was named in s. 8 of the 1874 Act. Trinity Medical School claimed a seat by virtue of being an institution authorized to establish a medical faculty in connection therewith, and to grant degrees in medicine and surgery within the same section.

[101]This action was referred to during the July 1877 Council meeting, but at that time no legal advice had been obtained on behalf of the Council.

[102]Minutes of CPSO, July 1880.

[103]Minutes of CPSO, June 1881.

[104]The exact nature of the change to be asked for was hotly debated. The series of resolutions was as follows:

1. To increase territorial representation.
2. In view of the increased and increasing number of representatives sent to this Council other than territorial and homeopathic representatives, it is expedient to make application to the Legislature with a view to having the Medical Act, s. 6, changed to read as follows: "That no one shall be eligible to have a seat in the Council, except those duly selected by the Official Territorial Division, Homeopathic representatives, and such teaching and examining bodies as are actually chartered and engaged in medical education in Ontario at the present time and who shall continue to be so engaged, and that as soon as their functions cease, then such teaching bodies shall forfeit their right to representation on the Council."
3. That Clause I be struck out and the following be substituted therefore: "That such bodies only shall be represented in this Council as are engaged in

(Footnote continued on p. 22.)

another three years (in 1884) that any amendments were discussed with the Attorney General, and he refused to ask the Legislature for any reforms at this time.[105]

Examinations

At this time the major function of the College was the conduct of licensing examinations for those who wished to practise medicine in Ontario. Although the profession had eagerly sought the right to conduct these examinations, in this early period they faced a number of difficulties. In the first place the conduct of the students under examination was becoming a problem. In 1876 a Special Committee, set up to discover the reasons for student misbehaviour, blamed it on the fact that the students had no place to wait before being called by the examiner.[106] A few weeks later the following resolution dealing with student behaviour was passed.

> After May 1879, any pupil at any exam detected using any notes, giving or receiving any assistance, under the influence of liquor, using insolent language to examiners or destroying the property of the Council shall lose his examination and have not less than one year added to the length of his curriculum of 48 months as fixed by the Council.[107]

The other problem facing the Council with regard to examinations was the proper composition of the Board of Examiners. In 1876 the first of a series of resolutions was introduced providing that members of the Council should not serve as examiners.[108] Similar resolutions were presented and lost every year until 1880, when the attempt was abandoned. After this time, however, it gradually became the practice to appoint examiners from outside the Council.

The 1887 Act

In 1887 an amendment to the Medical Act[109] was passed through the Legislature which cleared up several problems that had arisen since 1874. With regard to the composition of the Council, rather than increase the number of territorial representatives, it was decided to limit school representatives to those sent by named institutions.[110]

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teaching medicine in Ontario, examining students and conferring degrees in medicine, or who have affiliated with them some school teaching medicine in this province."

It was this last resolution that was carried.

[105] Minutes of CPSO, December 1884.

[106] Minutes of CPSO, June 1876.

[107] Minutes of CPSO, May 1879. On the other hand the Council was eager to help those patriotic students who took part in the North West Rebellion by allowing them the examinations they had missed through going to fight.

[108] Minutes of CPSO, June 1876. The resolution was lost by five votes to fourteen. This question had come up at the first Council meeting, but at that time no resolution had been made.

[109] S.O. 1887, c. 24.

[110] The Act also provided, however, that any medical school which subsequently came into operation would be entitled to representation.

The major purpose of this Act was to set up a procedure for disciplining members of the College. Practitioners who had been guilty of a felony had always been liable to have their names erased from the Register, and now this penalty could be levied against those who had been found guilty of infamous or disgraceful conduct in a professional respect.[111] At the same time the Act made provision for the Council, where it thought fit, to restore the name of an erased member to the Register.

In giving a professional body the power to determine that a member had misconducted himself and to expel him as a result, the Legislature had expanded the power of the College to the point where it could deprive a man of his accustomed means of livelihood. Thus, the Act tried to set up procedures that would ensure the privilege was not abused.

The Council was to appoint a Discipline Committee of three to five members, who would hear the evidence about the matter and make a written report of the facts of the case to Council. The Council was to base its decision on these facts. The Committee was to give the doctor into whose conduct they were inquiring at least two weeks' notice of the date of the hearing and in the notice specify the charges against him.[112] Both the Committee and the charged doctor had the right to counsel, and the hearing was to be held in the county where the offence had been committed or where the offender resided. At the hearing itself, testimony was to be given under oath, and both sides were to have the right to examine and cross-examine, and to call evidence. If the Council ordered erasure, the offender could appeal to a judge of the High Court of Ontario.[113]

The Act included several new provisions concerning the doctors' relationship with the courts. It provided for witness fees of five dollars per day and mileage according to a set tariff when a doctor was required to appear in court as a result of medical care he had given.[114] For some time the profession had been asking the Legislature to institute a limitation period of one year from the act of negligence in starting a malpractice suit.[115] This Act provided for the one-year limitation,

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[111]There were limitations on both these causes of erasure. A felonious conviction was not grounds for erasure if it was for a political offence outside the British Empire, nor could the adoption of any theory of medicine be considered unprofessional conduct.

[112]If the offender did not appear at the hearing, and if it were shown that he had been properly served, the hearing could proceed in his absence.

[113]The appeal was based upon the record of the hearing, the Committee's report to Council, and Council's order. The judge could confirm the Council's order, reverse it by ordering reinstatement, or send the matter back to the Committee for further inquiry.

[114]This provision aroused some opposition in the Legislature on the grounds that it gave doctors too great a privilege. It was replied on behalf of the profession that they were not trying to avoid giving evidence, but were rather seeking to be compensated for their loss of time. (*Globe,* Toronto, April 22, 1887.)

[115]Bills containing this provision were introduced in 1878 (Bill 109) and 1886 (Bill 170), but both were later withdrawn.

although it was to run from the termination of medical care in the matter complained of, rather than from the date of the negligence, in order to avoid prolonged arguments as to when exactly the malpractice occurred.

1887-1912

The Period of Opposition

During the twenty years around the turn of the century, the College was faced with a good deal of opposition, both from doctors within its ranks and from certain segments of the public. An opposition party developed within the Council which objected to its composition and many of its policies. A new political party made the College the focus of its attacks upon the self-governing professions; and special interest groups, notably the drug companies, attacked it whenever a conflict arose. During this period, too, Dominion reciprocity was introduced and the system of disciplinary procedure set up. By 1910 the College had gained in control over the profession, but it had to a large extent lost control over medical education to the universities.

The Medical Defence Association

Almost as soon as the College was created the desirability of a permanent meeting place was discussed. As early as 1872 an editorial in the *Canada Lancet* suggested that the Council should have its own hall.[116] This suggestion ultimately led to the greatest schism that the medical profession in Ontario had ever known.

The possibility of acquiring a permanent building was not seriously discussed in the Council until 1877,[117] but by 1880 an old church had been bought to serve as an examination hall and meeting room.[118] It soon proved to be inadequate and in 1882 a resolution was passed authorizing its sale and the purchase of a new site.[119] It was also decided to ask the government for a grant to aid in its purchase.[120] Such aid, however, was not obtained.

In any event land was purchased at the southeast corner of Bay and Richmond Streets in Toronto, and a building erected on it. The whole project cost $100,000, $60,000 of which was financed by a mortgage. As well as the Council chambers and an examination hall, the building contained office suites, the rents of which were to cover the mortgage payments. Unfortunately it was opened during a depressed period and the revenue was insufficient for this purpose. In the absence of any government grant, the difference had to be made up from Council revenues,

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[116] *Canada Lancet*, Vol. 4, p. 389.
[117] Minutes of CPSO, July 1877.
[118] Minutes of CPSO, July 1880.
[119] Minutes of CPSO, June 1882.
[120] *Ibid.*

specifically from the annual fee initiated under the Medical Act of 1874.[121] But since many members refused to pay the fee,[122] this source, too, failed to cover expenses.

In 1891 the Council approached the Legislature asking it to authorize an increase in the amount of the fee.[123] The government refused the request, instead passing an Act[124] designed to make the collection of the existing fee much simpler. Under the new regulation, each practitioner had to obtain an annual certificate authorizing him to practise, and this certificate could not be issued by the Registrar until the doctor had paid his annual fee. If, over the period of a year, no certificate was obtained, the doctor was liable to have his name erased on two months' notice from the Register unless in the interval he paid the amount owing.[125] When his name was erased, of course, the delinquent was subject to the penalties facing unregistered practitioners.[126] It was this provision that triggered the split within the ranks of the profession. There had always been a group of doctors who opposed the concept of the College; they had first refused to register and later they refused to pay the annual fee. Now they banded together to form the Medical Defence Association under the leadership of Dr. Sangster.

In a speech to the Council in 1895,[127] Dr. Sangster stated the position of the new Association towards the existing system. The Association's greatest objection was that the building was too great a drain on the resources of Council. The members felt it should be sold, even if a loss were incurred. Second, they objected to the presence of "school men" on the Council. Together with the homeopaths they outnumbered the territorial representatives and therefore could significantly influence the Council's decisions. It was because of the school men, too, that the Defence Association refused to pay the annual fee. These appointed men had a voice in both imposing the fee and spending the revenue. Since the Council was not based on "representation by population", they said, the fee was "unconstitutional". Finally Dr. Sangster argued that both the fee and the penalty for failure to pay it had been foisted on the profession without consulting them,

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[121] It was later argued that this fee originally was authorized as a means of raising revenue to support a building in the absence of a government grant. The argument does not seem to be borne out by the facts, however, since fees were first authorized in 1874 and no request for a grant was made until 1877.

[122] That Act had provided that the fees could be collected in a Division Court action, but the smallness of the amount made such a course uneconomical.

[123] Minutes of CPSO, June 1891.

[124] S.O. 1891, c. 26.

[125] The Act also provided for re-registration upon payment of all arrears of fees; and it restored the provision left out of the 1874 Act allowing the Registrar to demand a reply to a request for information within six months on pain of erasure.

[126] The measure did not pass through the Legislature without comment. One medical member (Dr. Dick of Bruce) said that his medical constituents opposed it on the grounds that the profession as a whole had not been consulted regarding it; but its sponsor, Dr. McKay, convinced the House that it should stand. *Globe*, Toronto, April 30, 1891.

[127] Minutes of CPSO, June 1895.

and certainly without their consent. The penalty especially he considered an insult to the profession and a sanction which would bring great hardship to some of its members.

The Association succeeded in having a Bill presented to the Legislature in 1892[128] which would repeal not only the 1891 requirement for a certificate, but also the provision authorizing a fee. In addition, the measure would have increased the territorial representatives from twelve to twenty-one and repealed the section giving the universities representation.[129] This Bill represented the first challenge to the power of the Council from within the profession since the homeopaths' revolt in 1872.[130] The Council's friends in the Legislature rose to oppose it[131] and succeeded in having it referred to a Special Committee that included all the doctors in the House.[132] This Committee reported the Bill adversely and the House defeated a motion to refer the measure back to the Committee with instructions to provide for a one-year suspension of the penalty section.

The emergence of an opposition within the profession evidently caused the Council some concern,[133] and on September 29, 1892 the Legislative Committee of the Council met with the Executive of the Medical Defence Association. Although the Council met most of the concessions demanded at this meeting,[134] the Associa-

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[128](1892) Second Session of the Seventh Legislature of the Province of Ontario, Bill 86.

[129]The Bill's sponsor, Dr. Meacham, justified this provision by the Defence Association's argument that the university representatives dominated the Council, and that if doctors were to pay a fee they ought to elect those who imposed it.

[130]In his address to the Council in 1892, the President pointed out that one of the most objectionable features of the Bill was that it was introduced by a medical man. He said that such a course could only lead to uncertainty and confusion, since the position of College members would be controlled by whatever faction of the profession had the ear of the Legislature.

[131]The Council's spokesman, Dr. McKay, replied to Dr. Meacham that there was no general support among the profession for the change in the Council's composition. In support he cited thirty-four letters he had received from those who had signed the Defence Association's petition withdrawing their support from it. Although he admitted that there was opposition to the penal clause, he justified the penalty on the grounds that since the Council had been led to believe that they could rely on the fee in calculating their budget, they were entitled to an effective method of collecting it.

[132]*Globe,* April 2, 1892. Nine of the eleven doctors were opposed to the Bill. Minutes of CPSO, June 1892.

[133]At the 1892 meeting a motion was put forward that school representatives be elected by their graduates. In opposing and defeating this motion, the school men made their position clear: they felt that they had a contractual right to seats on the Council. In 1865 they had given up the right to certify their students as fit to practise without further examination, in return for the right to sit on the Council that imposed the further certification examination.

[134]The Defence Association demanded that the penalty provision be repealed and that no fees be collected until the composition of the Council was reformed. The Council Committee agreed not to enforce the penalty clause until after the next election; and although the imposition of fees would continue, Council would make no effort to collect them from those who would not pay. The Committee agreed with the Association that territorial representation be increased to seventeen and that the schools' representation be reduced to four (Toronto, Trinity, Queen's and Western).

tion decided it still was not satisfied and would continue to agitate. This agitation resulted in an Act that was passed in 1893.[135]

First, this Act provided for an election to be held the following year to elect a reformed Council to which five territorial members had been added, thus giving the practitioners a clear majority.[136] As presented the Bill provided also for a reduction in the number of school representatives to four. The Legislature was generally in favour of the Bill; but Dr. MacKay managed to convince them that to pass this clause would be a violation of the rights of these institutions and the section was dropped from the measure.[137]

A compromise that must have been unsatisfactory to both sides was reached on the most important section of the measure. As introduced, the Bill provided for the repeal of the penalty section. However, the Special Committee, to which it was referred, refused to report this provision. Instead the Act provided that the sections which covered the imposition of fees and the penalties for non-payment should remain in abeyance until after the 1894 election. Then the new Council could by by-law adopt these sections, modify them, or repeal and readopt them as it saw fit. A final concession was made to the Defence Association, however, in that only elected members could vote on the imposition of fees.[138]

The first Council meeting after the election was held in 1895.[139] Of a Council of thirty, fifteen new members were returned. Dr. Sangster was one of these, but he could count on the invariable support of only three others. These men felt themselves to constitute an official opposition, and for the next few years there was almost no matter that came before the Council that they did not hotly oppose.[140]

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[135]S. O. 1893, c. 27. This Act must have been a double blow to the Council since the Government had refused to consider the amendments suggested by its Legislative Committee. Minutes of CPSO, June 1893.

[136]The Council term was reduced from five years to four. At the 1894 meeting the Council members expressed the opinion that the reallocation of the electoral divisions was gerrymandering and aimed at depriving four of its eldest members of their seats. A Committee was set up to study better distributions. Minutes of CPSO, June 1893.

[137]*Globe*, Toronto, May 11, 1893.

[138]One provision of the Act that had the approval of both factions of the profession was the change in the provisions for dealing with disputed elections. Previously, their validity was to be decided by the Council, and the one case that had come before it had caused a great deal of ill feeling. Henceforth they were to be decided by a County Court Judge in the electoral division in the same manner as a disputed municipal election. (Minutes of CPSO, June 1881.)

[139]This election was held after the 1894 meeting. Although a meeting was held in 1894, the Council was very conscious of the impending changes and did not discuss any contentious issues.

[140]For example, the Association continued to oppose the structure of the Council. It felt that Council officers should be elected by secret ballot. (It was decided at the first Council meeting that such elections should be by open vote.) The Association also routinely objected to the composition of several committees. For instance, it felt that no school representative should sit on the Discipline Committee.

The main topic of discussion at the 1895 meeting was, of course, whether the annual fee should be imposed and, if it were, how it should be collected. Although the Defence representatives argued fiercely against it, the financial position of the College made it clear that some kind of a fee was necessary. At this time the mortgage on the building was held by the Royal Bank and negotiations for its renewal were being carried on concurrently with the meeting. The Bank refused to renew the mortgage unless the penalty provisions were re-imposed. The Council bowed to the inevitable and adopted the provision, although it was not to come into effect until June 1, 1896, and then only if sufficient dues were not collected.[141] Clearly "sufficient funds" were not collected, since the penal provision was put into effect the following year without much opposition.[142]

The first and most repeated demand of the Defence Association was that the building be sold. In spite of the hopes of the Council, the rents from the offices (even including an allowance for the rent the Council would have to pay for other premises) never reached a sum that would cover the mortgage interest. By 1898 the whole Council agreed that it must be sold; now the discussion was concerned with whether or not it should be sold at a loss. A Special Committee was set up to conduct the sale. Although at one time it was authorized to accept an offer of $90,000,[143] no suitable purchaser was found until 1905, when it was sold for $100,000.[144] Two years later another plot of land was bought at 170 University Avenue;[145] but in the interests of economy it was decided to renovate the existing building for offices and rent examination halls, rather than to erect a new building. Since that time the College has occupied several premises, but none has created the controversy that arose over the Bay and Richmond venture.

Although the penal section was adopted in 1896, it was not until 1900 that the first warnings were sent to delinquents under the section. By 1901 several had been struck off the Register and, in the solicitor's opinion, could be prosecuted.[146] This announcement stirred the Defence Association's last attempt at effective opposition. In 1902 it once again succeeded in having a Bill introduced in the Legislature.[147] In essence, it provided that the Council should consist only of the seventeen elected members, and that the influence of the universities should be restricted to representation on the Board of Examiners. This Bill aroused a great deal of opposition in the Legislature, and like the earlier measures sponsored by the Association was sent to a Special Committee that included all the doctors in the House. Although this

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[141] Minutes of CPSO, June 1895, By-Law 69.
[142] Minutes of CPSO, June 1896.
[143] Minutes of CPSO, June 1895.
[144] Minutes of CPSO, Special Meeting, December 1905.
[145] Minutes of CPSO, Special Meeting, October 1907.
[146] Minutes of CPSO, June 1901.
[147] (1902) Fifth Session of the Ninth Legislature of the Province of Ontario, Bill 118.

Committee's report on the Bill was adverse,[148] it recommended that doctors whose names had been erased for non-payment of fees should be allowed to vote in the forthcoming Council elections.[149] At the next Council meeting Dr. Sangster maintained that this concession should include a provision that a question be attached to the ballots asking the voter if he was satisfied with the Council's composition. The other members of the Council who had been present at the meeting of the Special Committee maintained that the results of the election would answer the question, and the ballots were sent out without any question attached.[150] The election results indicated that the majority of the profession was in favour of the Council as it existed. Thus ended the attempt of the Defence Association to alter the Council, although members continued to offer opposition to Council measures until Dr. Sangster's death in 1904 when the movement lost most of its impetus.

Opposition from the Patrons

Compounding the opposition from the Medical Defence Association was the policy of the Patrons,[151] an opposition party within the Legislature. This party first achieved representation at Queen's Park in 1895 and immediately attempted to redeem its election promises by introducing a Bill to amend the Medical Act.[152] This measure would have repealed the existing registration, examination and discipline provisions, and substituted procedures that were not conducted by the

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[148]The report reads:

> This Committee beg to report that they have considered the provisions thereof and have had the benefit of numerous deputations representing the Medical Defence Association, the CPSO and the universities and colleges, as well as the medical profession at large. Your Committee have found it impossible to reconcile the conflicting views of those who promote the bill and those who represent the Council and the institutions. Practically, the representatives of the colleges on the Council are eight in number. The representatives of licensed practitioners in homeopathy strongly opposed the abolition of the special representation on the Council to which they became entitled under the provisions of the Act when it was originally passed. Your Committee are of the opinion that any interference with the present basis of representation or reconstitution of the Council may well stand over until after the next election of representatives to the Council, in connection with which the views of the profession at large should be obtained enabling the Legislature to be put in possession of information as to how far a general desire exists among the medical profession for any change in the constitution of the Council.

Journals of the Legislative Assembly of Ontario, 1902, p. 246.

[149]This condition was enacted as s. 21 of the Statute Law Amendment Act. S.O. 1902, c. 112.

[150]Minutes of CPSO, June 1902.

[151]The Patrons sought support from among the working classes and especially the farmers. Party members told these groups that they were exploited by business and the professions. One of their arguments was that professional colleges prevented poor men's sons from joining their ranks. They advocated the abolition of these colleges and "free trade" in professional practice. In the Legislature they made the medical profession their first target.

[152](1895) First Session of the Eighth Legislature of the Province of Ontario, Bill 96.

Council.[153] The main force of the party's attack, however, was on the tariff system. In Bill 96, they proposed to leave the Divisional Associations the power to suggest tariffs, but approval was to be expressed by a government Order in Council. Both the majority and the Official Opposition joined in condemning the Bill and on second reading voted to give it the six months' hoist.[154] Undeterred by this defeat, a week later the Patrons introduced another Bill,[155] which provided that the maximum fee charged a medical student seeking registration should be fifty dollars for both examination and registration. This measure was withdrawn, however, before its second reading. In return for this concession a Government Bill was introduced the next day.[156] It repealed the section of the Medical Act which allowed the Council to approve medical tariffs, thus leaving the question of what was a "reasonable charge" to the judge hearing the case. This measure was passed unanimously in the Legislature.[157]

At the next session the Patrons introduced another Bill to limit registration fees.[158] Once again the rest of the Legislature united against the party and the Bill was defeated on its second reading. This was the last attempt by the Patrons at medical legislation, although they were still to act as a restraining influence on the measures others put forward.

The Council, however, did not accept the abolition of the tariff with resignation. In 1896 a resolution was passed stating that a provincial tariff was desir-

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[153]The Bill provided that the registration examinations would be conducted by a Board composed of representatives of the College, the medical schools (who could not be teachers), and the homeopaths; two additional members were to be appointed by the Lieutenant Governor on the advice of the Minister of Education. Anyone who held a medical degree from a university in Canada or the United Kingdom that followed a curriculum approved by the government was to be allowed to write the examinations. Erasure was still the penalty for unprofessional conduct, but the hearing procedure was to be a trial before a County Court Judge. The Bill also defined "unworthy conduct" to include conviction of a criminal offence, habitual drunkenness, false statements as to qualifications or ability to cure certain diseases, and conviction for offences under the Public Health Act or an Act respecting the registration of births, marriages and deaths. The Bill provided also for a licence for female midwives.

[154]*Globe,* Toronto, March 28, 1895.

[155](1895) First Session of the Eighth Legislature of the Province of Ontario, Bill 197.

[156]S. O. 1895, c. 28. During the Council meeting of 1895 the Legislative Committee explained that the Act was a government measure, although it had been introduced by Dr. MacKay. The purpose was to save the Government from attacks by the Patrons, who were claiming that the Government had given the doctors the power to legalize the high fee the public were charged for medical care.

[157]The Act represented a complete reversal of the Government attitude to the question of fees from that they had shown in opposing Bill 96. At that time the following report appeared of the Premier, Oliver Mowat's, statement on the question of fees: "Without going into details of whether or not they were too high, he pointed out that in the long rate they went to benefit the profession and thus eventually to benefit those who paid them." *Globe,* Toronto, March 30, 1895.

[158](1896) Second Session of the Eighth Legislature of the Province of Ontario, Bill 105. It was in the same form as Bill 199 of the previous year.

able,[159] and a questionnaire was sent to the College members to ask for their opinion on the matter.[160] On the basis of the results a petition was prepared asking the Legislature to change the Act. The Government took no action, however, partly because of fear of the Patrons, but also because of the objections of Dr. Sangster,[161] and the whole matter fell into abeyance. It arose again in 1903 when the Council appointed a Special Committee to prepare a tariff.[162] The next year the Committee presented a schedule based on maximum and minimum fees.[163] Although the tariff was presented to the Government in 1906,[164] the Legislative Committee reported that it felt no measure based on the tariff would be passed and once again the matter was dropped.[165]

Education

Although the Council always took very seriously its task of supervising the curriculum followed by medical students, it was not until 1880 that any great changes were made in its requirements. At that time another year was added to the three that were to be spent at a medical school.[166] The following year the Council decided not to hold its own Matriculation Examinations but rather to set a minimum matriculation standard.[167] Finally in 1889 a ten-week summer academic term was added to the required four winter ones.[168] By this time it was recognized that there should be a general reappraisal of the system of medical education in Ontario, and in 1890 a Special Committee of the Council was set up to investigate the curricula of Canadian, British and leading European universities.[169] This Committee reported that Ontario schools placed too much emphasis on formal lectures and not enough on practical training. The members also felt that the course should be lengthened

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[159]Minutes of CPSO, June 1896. The Defence Association agreed with the rest of the Council on this measure. The only point of discussion was whether the tariff should be provincial or divisional.

[160]The questionnaire requested the doctors' opinions on the tariff, tougher penalties for unauthorized practitioners, and control over matriculation. Minutes of CPSO, July 1897.

[161]This was perhaps the most serious misunderstanding between the Defence Association and the rest of the Council. When the petition to the Government was prepared, Sangster objected on the grounds that the questionnaire was sent out only to obtain information and was not intended to be used as a basis for legislation. Finally he agreed to allow the petition to be presented, provided that no arguments in its favour were made by the Council delegation. After the President had explained the proposal, Sangster — feeling that the explanation was such an argument — spoke against the proposed measures, thus incurring the censure of the Legislative Committee, the Executive Committee, and most of the Council.

[162]Minutes of CPSO, July 1903.

[163]Minutes of CPSO, July 1904.

[164]Minutes of CPSO, July 1906.

[165]Minutes of CPSO, July 1906.

[166]Announcement 1879-80.

[167]Announcement 1880-81. The matriculation standard set was the provincial High School Intermediate Examination with the Latin option. In 1887 the standard was raised to the Second Canadian Non-Professional Examination with a Latin option (Announcement 1886-87).

[168]Announcement 1889-90.

[169]Minutes of CPSO, June 1890.

and the matriculation standard raised.[170] These recommendations led to the publication of new curriculum requirements in 1891.[171] The length of the academic course was unchanged, but the number of lectures in each course was reduced from 100 to fifty. A fifth year was added to be spent in practical study, half with a practitioner and half in a hospital.[172] A new Council examination was to be taken after the third or fourth year, as well as the existing preliminary and final examinations. Finally the matriculation standard was changed to the Pass University Departmental Matriculation Examination with the prescribed science option.[173]

Soon it was felt that even these requirements were not high enough, and in 1895 the matriculation standard was raised to Junior Matriculation with honours in certain subjects.[174] Ross, the Minister of Education, recognized that, in view of the Patrons' opposition to any standard at all, this was a singularly unfortunate time to initiate changes. To forestall any impending criticism, he introduced a Bill[175] which provided that anyone who had passed any arts matriculation examination approved by the government would be entitled to register as a medical student and to write the Council examinations. He withdrew the measure, however, when the Council agreed to make the curriculum changes he demanded.[176] The

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[170]Minutes of CPSO, June 1891. It was at this meeting that it was first pointed out that a higher matriculation and longer course would have the effect of reducing the number of recruits to an overcrowded profession. The majority of Council felt, however, that such considerations could not influence their decision.

[171]Announcement 1891-92.

[172]In addition the Committee retained the old requirement that twenty-four months during the first four years be spent working in a hospital.

[173]The Council members seemed to be confused about the multiplicity of examinations available to those leaving high school, but thought that this examination was more difficult than the last.

The Council had asked the Legislature to take action in the matter of matriculation, but the government did not accede to the request. The 1891 Act provided that the Council's matriculation standards must be equal to the university curriculum, or to junior or senior matriculation in arts, or to the Education Department's High School Leaving Examinations. Minutes of CPSO, June 1891.

[174]Announcement 1895-96. The Council had the support of the Defence Association in making this regulation. One of Dr. Sangster's first demands was that the matriculation standard be raised so as to prevent further overcrowding of the profession. He acknowledged, however, that it might be necessary in some other context (for example, through the press or before the Legislature) to base the elevation of standards on the public interest. Minutes of CPSO, June 1895.

[175](1896) Second Session of the Fifth Legislature of the Province of Ontario, Bill 195. The Bill provided also that any changes in the regulations dealing with student registration or examination would have to be approved by the Lieutenant Governor in Council.

[176]When he withdrew the Bill, Mr. Ross explained his motives as follows:

> . . . the House and the Government had confidence in the way in which Council had managed its affairs, but during the last year or two, there had been a disposition on the part of the Council to impose restrictions that were so severe as to prevent the registration of a number of young men and it was the object of the Bill to prevent this. On consultation with them, he had received assurances that all the points covered by the Bill would be conceded by the Medical Council at its next meeting in June . . . .

Globe, March 25, 1896.

1896-97 Announcement stated that the minimum entrance standard would be matriculation in arts with physics and chemistry.

Ross's Bill was a shock to the Council, and the possibility that it might be brought forward again was always borne in mind when educational changes were discussed thereafter. The Council even considered abandoning the fifth year requirement, in order to deprive the Patrons of one basis of their accusations of discrimination against poor students.[177]

Another factor which limited the College's control over education was the growth in the power and prestige of the universities, which allowed them to initiate changes in the medical curriculum and to force the College to accept them.[178] The first incident of this type occurred when several universities increased the academic term from six to eight months. In 1896 the Council recognized the *fait accompli* and in its regulations gave students the option of attending four eight-month terms or four six-month terms plus a summer term. It still had enough control over education, however, to require that all schools offer the longer terms by 1898.[179] A similar instance was the fifth year. As the universities began to add another year to the medical program, the College was forced to change its regulations so that students had the option of spending their final year at a university or in practical training.[180] By 1906 the University of Western Ontario was influential enough to have the Legislature amend the Medical Act to provide that Council examinations should be held in London as well as in Toronto and Kingston[181] — a privilege which the University had been seeking since the foundation of its medical school.

Discipline

Although the discipline procedure was set up in the Act of 1887, no cases were referred to the Discipline Committee until the meeting of 1889.[182] Four cases, and their results, were reported the following year.

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[177]Minutes of CPSO, June 1896.

[178]The spurt of activity on the part of the medical schools may well have been due to the criticisms of Abraham Flexner, who investigated medical education on behalf of the Carnegie Foundation and found the courses generally inadequate.

[179]Announcement 1896-97.

[180]Minutes of CPSO, Special Meeting, November 1908.

[181]S.O. 1906, c. 24.

[182]Minutes of CPSO, June 1890. The original by-law appointing the Discipline Committee provided that all cases must be referred to it by a resolution of the Council. In 1905 this rule was changed to provide that the Committee could consider all complaints made to its members. The real effect of this change was that complaints by four practitioners (one of the accepted methods of making a complaint) could be given to the Committee, which could investigate the matter alone without waiting for a Council meeting.
In 1905 and 1909 it was suggested that the Executive Committee should refer complaints to the Discipline Committee; since this was thought to be beyond its existing powers, in 1910 the Act was amended to allow the Executive Committee to make such referrals.

The Committee found[183] that in two of these cases,[184] the man concerned had been guilty of advertising contrary to the Ontario Medical Association's Code of Ethics; in addition, one of them had practised "magnetic healing" by laying on hands, and the other had promised to cure two men who were dying of tuberculosis. The Council decided that these practices amounted to professional misconduct,[185] but they also considered the only penalty they could impose — erasure — too severe. Therefore, on receipt of a letter of apology from each man and a promise to behave ethically, they suspended any action on the matter for one year.

The letter of apology in return for suspension of action became the routine solution to most disciplinary actions.[186] In the first two cases, however, it was not successful. One of the doctors, Dr. Lemon, was expelled from the College the following year, since the Council found that his conduct had not improved;[187] and the other, Dr. Washington, was expelled in 1892 for violating his promise to use only a certain form of advertising.[188]

Most of the early discipline cases were concerned with advertising. Advertising was not yet prohibited completely; but it was considered improper to guarantee cures,[189] to advertise unearned qualifications,[190] or to advertise free consultations,[191] on the grounds that such claims were usually followed by attempts to fleece the patient. It was also held to be improper for a doctor to shelter an unorthodox practitioner behind his degree,[192] or to work as a physician for a drug company using its medicines exclusively.[193] By 1900 these latter practices were so widespread that the Council passed a resolution condemning them.[194]

The disciplinary power of the College was new, and it was not to be expected that it would go unchallenged. The first opposition occurred in an appeal by Dr.

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[183]These hearings revealed procedural omissions which were repaired by the 1891 Act, when a section was added to supply a method for subpoenaing witnesses and producing documents. The same Act provided also that the costs of the hearing might be taxed against a person whose name was erased before the Taxing Officer in the same manner as in a Supreme Court case.

[184]Of the other two cases, one defendant could not be found and the other was convicted of procuring an abortion. Minutes of CPSO, June 1890.

[185]Minutes of CPSO, June 1890.

[186]For example, in 1893, two actions were suspended. Similar suspensions took place in 1898 and 1900.

[187]Minutes of CPSO, June 1891.

[188]Minutes of CPSO, June 1892.

[189]Minutes of CPSO, June 1890.

[190]Minutes of CPSO, June 1901.

[191]Minutes of CPSO, June 1894.

[192]Minutes of CPSO, June 1893.

[193]Minutes of CPSO, July 1898. Some feeling was created against the College on this matter. A newspaper which derived substantial revenues from patent medicine advertising printed a series of editorials prepared by the drug companies criticizing the College's discipline procedures as unfair and unjudicial.

[194]Minutes of CPSO, June 1900.

Washington.[195] He based his objections on the procedures followed, arguing that the Discipline Committee had heard unnecessary evidence and drawn unnecessary conclusions, and that the Council could not reach a conclusion when it had not heard the evidence. The Court upheld the Council's decision, however, on the grounds that the procedures followed were those authorized by the Act, and that the Council must be assumed to have read the Committee's report and a transcript of the evidence.

The result of a later appeal concerning the definition of improper conduct was not so favourable to the Council. In this case one Dr. Chrichton had his name erased because he advertised a medicine that would cure grippe. The Council objected not so much to the advertising as to his refusal to reveal the formula of the medicine.[196] Before this appeal by Dr. Chrichton,[197] the Council felt it could base its decision on what constituted unprofessional conduct on the definition quoted by Lord Esher in *Allinson v. General Council of Medical Education and Registration*:[198]

> If it is shown that a medical man in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency . . . .[199]

The judge in the Chrichton case would not accept this definition, however, saying instead:

> The meaning of the statute is not what is infamous or disgraceful from a professional point of view, or as regarded by a doctor, and as construed in the light of the written or rewritten ethics of the profession; it is whether his conduct in the practice of his profession has been infamous or disgraceful in the ordinary sense of the epithets and according to the common judgement of men.[200]

On this basis, it was held that Chrichton's conduct was not reprehensible, and his name was ordered restored to the register.[201]

The third aspect of the power to discipline that was tested by litigation during this period was the application to discipline actions of the doctrine of *autrefois acquit*. In 1908 the police began a campaign to seek out abortionists, and as a result several doctors were convicted. A number of newspapers attacked the Council, saying that it should have corrected this evil within its ranks instead of

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[195] *Re Washington* (1893) 23 O.R. 299.

[196] Chrichton, however, had offered to allow the cure to be tested by a hospital.

[197] *Re Chrichton* (1906) 13 O.L.R. 271.

[198] [1894] 1 QB. 750.

[199] *Ibid.*, 754.

[200] 13 O.L.R. 281.

[201] The decision was based also on procedural irregularities. The Court said that a further inquiry into Chrichton's conduct was not precluded, but intended that it would have to be shown that the medicine was ineffective before he could be found guilty.

leaving it to the police.[202] Although it defended itself by pointing out that it could act only on a criminal conviction, the Council was so stung by this criticism that it began to discipline abortionists.

During the early discussion on the matter, Council members had wondered what the position would be if they disciplined a doctor who was appealing his conviction or who had been acquitted.[203] The latter question was answered in the case *Re Stinson and the College of Physicians and Surgeons of Ontario.*[204] Dr. Stinson had been acquitted in the courts of procuring a miscarriage; but the Council later found him guilty of professional misconduct and expelled him from the College. He applied for a writ of prohibition against the erasure, on the grounds that since the courts had found him not guilty, the Council could not discipline him on the same charge. The High Court held that, since the Council was not basing his expulsion on a conviction but rather on unprofessional conduct, this plea of *autrefois acquit* did not apply. It was specifically stated in the judgement that there was no definite distinction between criminal and unprofessional conduct; unprofessional conduct could apply to acts that would also amount to an indictable offence, even though the person had been acquitted of that offence.

Until this time prosecutions had been conducted mainly by the Official Prosecutor, with actions from time to time being initiated by a doctor.[205] Since the Prosecutor received only a token salary and had to pay most of his expenses out of the money he recovered in fines, he was understandably reluctant to prosecute many borderline cases. Realizing this position, in 1896 at the suggestion of the Discipline Committee, the Council set up a Complaints Committee. The duty of the Committee was to advise the Prosecutor whether to proceed in doubtful cases. If he were advised to institute an action and the defendant were acquitted, the Council would pay his expenses.[206]

Unfortunately, cases frequently were doubtful. Although by the 1874 Act it was possible to prosecute an unlicensed man for "practising", thus making it unnecessary to show that he had posed as a qualified man, the law on what constituted "practice" often made it difficult to obtain a conviction. An early case, *R v. Hill,*[207] seemed to strengthen the registered doctors' position, since the defendant was found guilty on the evidence of one instance of practising rather

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[202]Minutes of CPSO, July 1908.

[203]*Ibid.*

[204](1910) 27 O.L.R. 627.

[205]The Discipline Committee was concerned about one doctor who made a habit of finding unqualified practitioners and blackmailing them with threats of prosecution, then after extorting money with these threats, often prosecuting also. Eventually he was called before the Discipline Committee. But when he was scheduled to appear before the Council for a decision, he could not be found, and so no further action was taken. Minutes of CPSO, July 1877.

[206]Minutes of CPSO, June 1896.

[207](1885) 8 O.R. 407.

than the several that usually were required. But this decision was reached because in the course of his visit to the patient he had prescribed a medicine which he imported in gross. Three years later this reasoning was to lead to an acquittal in another case. In *R v. Stewart,*[208] the defendant was found not guilty of practising medicine, since he prescribed no drugs on his visits but claimed he could cure merely by looking at the patient. Prescription of drugs gradually became an important condition of unauthorized practice, while fewer judgements were based on a single instance of treatment.[209]

At the same time new systems of treatment, notably chiropractic and osteopathy, were entering areas where devices other than drugs effected cures. Since these methods did not meet all the criteria of practice, it was impossible to obtain convictions against those who followed them;[210] and the Council decided that the only remedy lay in the hands of the Legislature. In 1905 it authorized the Legislative Committee to present a Bill to the government which defined the "practice of medicine".[211] The government rejected the measure, but it did consent to lay the question before the Ontario Court of Appeal on a reference.[212] The question referred was this:

> Ought it to be held upon the true interpretation of section 49 of the Ontario Medical Act, R.S.O., 1897, Cap. 176, that a person not registered under that Act, undertaking or attempting for reward to cure or alleviate disease, does not practise medicine within the meaning of that section, merely because the remedy advised, prescribed or administered by him does not involve the use or application of any drug or other substance which has or is supposed to have the property of curing or alleviating disease, that is to say, do the words "to practise medicine" in the said Section mean to attempt to cure or alleviate disease by the use of drugs, etc., or do they include cases in which the remedy or treatment "advised, prescribed or administered does not involve the use of drugs or other substances which have or are supposed to have the property of curing or alleviating disease."

In his answer the Chief Justice of Ontario suggested that the statute should be read in the light of the present-day situation, and that the practice of medicine did not consist exclusively of drug therapy, as it had in earlier times. He felt, however, that he could give no general answer to the question that would apply in every case, and that specific answers could be given only to specific cases. He pointed out also that the court's function in a reference was not to make laws but to interpret

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[208](1880) 17 O.R. 4.

[209]In *R v. Raffenburg* (1909) 15 C.C.C. 295, it was held that treatment of one patient was sufficient grounds for conviction, if there was continuous attendance on that patient.

[210]In *R v. Valleau* (1900) 3 C.C.C. 435, it was held that to diagnose and then manipulate did not amount to practising medicine.

[211]The proposed amendment would have substituted the practise of any art of healing for the right to practise medicine given to College members. Instead of the unauthorized practice of medicine, it would be an offence for any unregistered person to practise any art of healing, or to attend, treat or attempt to heal any person who was, or was supposed to be, the subject of any illness or disease. Minutes of CPSO, July 1905.

[212]The judgement was given on November 21, 1906 and reported in 13 O.L.R. 501.

existing law. Except for Meredith, J. A., who felt that the situation was fully covered by *R v. Stewart,* the rest of the judges agreed with the Chief Justice. Garrow, J. A. expressed the most favourable opinion:

> The term practising medicine need not and does not, in my opinion, necessarily involve only the prescribing or administering of a drug or other medicinal substance, but may well include all such means and methods of treatment or prevention of disease as are from time to time generally taught in the Medical Colleges and practised by the regular or registered practitioner.

Although the result of the reference was favourable to the College, the Council thought it was too vague and continued to press for a statutory definition. It also began to openly oppose the new groups, but with indifferent success.[213] In 1908 the Council began proceedings for an injunction against the practice of osteopathy, but the action was abandoned at the discovery stage.[214] In 1910 it asked the government to annul the charter of the Optometrist's Association, but the request was refused.[215] In 1912 it succeeded in having a Bill introduced that would require osteopaths to register under the Medical Act after passing the Council examinations.[216] The measure caused such an uproar in the House, however, that its sponsor, Dr. Jamieson, withdrew it after second reading on the grounds that, under the circumstances, "it would not be in the best interests of the medical profession and the public to have the Bill pass at the present time".[217]

Unregistered men often legitimized their position by having a private act passed which authorized them to practise. Now the Council began to oppose these Bills. It could not often cause their defeat, since it had little influence in the Private Bills Committee; but it often managed to impose conditions or restrictions on the right to practise. For example, although in 1897 the Legislative Committee of the Council was able to get a Private Bill withdrawn which authorized one Zelinski to practise medicine,[218] the following year an Act was passed which authorized him to practise according to the eclectic school. The only concession that the Committee could obtain at that time was that he not be made a member of the College.[219] In 1902 an Act allowing Louis Gagne to practise was made conditional on his passing the Council examinations,[220] and a similar condition

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[213]It is interesting to note that during this period one of the Council members thought that some of the "quack" methods should be taught in medical schools. Dr. Hart sponsored resolutions that Hydro and Electro Therapy and Massage be part of the curriculum every year between 1907 and 1910. All were defeated.

[214]Minutes of CPSO, July 1908.

[215]Minutes of CPSO, July 1910.

[216](1912) First Session of the Thirteenth Legislature of the Province of Ontario, Bill 102. The examinations would be the same as those written by medical students, except that a final examination in osteopathy would be substituted for one in medicine.

[217]*Globe,* Toronto, April 11, 1910.

[218]Minutes of CPSO, July 1897.

[219]S.O. 1898, c. 122.

[220]S.O. 1902, c. 108.

was imposed on one Dr. Coulter in 1910.[221] Another type of limitation — the right to practise only on Pelee Island — was imposed on an osteopath in 1904.[222]

Another group of unauthorized practitioners, and one which caused the Council a great deal of worry, was the fifth year medical students. Many of these set up practise on their own account rather than studying under a registered practitioner as the regulations required.[223] In some cases the practitioners even protected them.[224] The Council was understandably reluctant to prosecute[225] these men, since they were ultimately to become members of the College but it was felt that some steps should be taken. One suggestion was that the doctors responsible for them be disciplined. But when two doctors were summoned to explain their conduct, they gave reasonable excuses and there were no further investigations.[226] In 1904 a proposal was put forward to license such students; but again, although it was much discussed, no action was taken.[227] Eventually the problem was substantially eliminated by the requirement that the fifth year be spent at medical school.

Dominion Reciprocity

Although methods of reciprocal registration with Great Britain were a constant topic of discussion and were often the subject of attempted legislation,[228] in the period between 1890 and 1910 the issue was abandoned in favour of the establishment of Dominion reciprocity. About 1870 there had been an attempt to set up a system of Dominion registration; but it had been short-lived, since the College thought that no other province enforced standards comparable to those of Ontario.[229] It was not until 1890 that the Council once again discussed the matter,[230] and in 1892 a Special Committee was appointed to ascertain how a

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[221]S.O. 1910, c. 166.

[222]S.O. 1904, c. 105. This Act was passed on the receipt of a petition signed by the entire adult population of the island.

[223]Minutes of CPSO, June 1894.

[224]One such practitioner was Dr. Jones of Thornhill, who was called before the Discipline Committee for allowing his son to practise under his protection before he had passed his final examinations. Minutes of CPSO, June 1902.

[225]There is little doubt that a prosecution would have succeeded. In *R v. Wagner* (1916) 9 W.W.R. 1000, it was decided that where a graduate M.D. who had not yet passed his Dominion Council examinations acted as an assistant to a registered doctor, he was guilty of unauthorized practice, on the grounds that he could not do as an agent what he could not do on his own behalf.

[226]Minutes of CPSO, July 1903.

[227]Minutes of CPSO, June 1904.

[228]In 1887 when the Imperial Medical Act was repealed, doctors on the British Register were prohibited from practising in Ontario as of right. In 1889 it was decided that for the present such men could be registered in Ontario on passing the Council's final examination. A Bill (136) to the same effect was introduced in 1896 but was withdrawn without being debated.

[229]This attempt is mentioned in Dr. Roddick's speech reported in the Minutes of the 1901 meeting. He felt this earlier failure was due in part to the opposition of the practitioners to university representation in the scheme.

[230]Minutes of CPSO, June 1890.

system of reciprocal registration could be set up throughout the Dominion.[231] This Committee opened the question for discussion at the next meeting of the Canadian Medical Association. At that time a scheme was agreed to whereby each province would set up a Central Examining Board similar to that in Ontario. Once these Boards had been established, a committee would be formed to standardize the matriculation requirements and to implement reciprocal relations.[232] But although they had all agreed in principle, several provinces now raised issues which they felt militated against the scheme. The most important problem was the inability of the Quebec government to convince the universities in that province that their graduates should submit to a Council examination.[233] British Columbia feared an influx of doctors resulting in an overcrowded profession.[234] Thus, no one was willing to take the initiative in setting up the scheme. Then in 1899 Dr. Roddick, a member of the Dominion Parliament, advanced his scheme for a Dominion Medical Council in the House of Commons. This body would consist of representatives from the provincial Councils, and would register graduates who complied with its regulations[235] and passed its examinations. These men would be able to practise in all territories controlled by the Dominion, and it was hoped that the provinces would pass Acts enabling registrants to practise within their several borders.

Dr. Roddick first presented his Bill in 1899 but withdrew it when the Ontario Council objected to certain provisions.[236] Primarily the Council opposed the scheme of representation. The original Bill provided for three representatives from each province, but the Council felt that representation should be based on population. In 1901 Dr. Roddick appeared before the Council and promised to change his Bill to accord with its ideas of the Dominion Council's composition. He also offered his assurance that the Dominion body would assume no disciplinary functions nor act as the exclusive examiner; those who intended to practise in Ontario would be able to write either the Ontario or the Dominion examinations.[237] On these assurances the Ontario Council withdrew its opposition, and the Bill was passed by the Dominion Parliament in 1902.[238] There were still several problems which delayed its implementation. First, regulations had to be drafted. When they were ready, both Quebec [239] and British Columbia[240] raised

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[231]Minutes of CPSO, June 1892.
[232]Minutes of CPSO, June 1893.
[233]Minutes of CPSO, 1894, 1896. McGill University was one of the strongest opponents of the 1869 Act on the same grounds.
[234]Minutes of CPSO, July 1899.
[235]These regulations would require a matriculation standard and educational qualifications equal to the highest provincial requirements.
[236]Minutes of CPSO, July 1899.
[237]Minutes of CPSO, June 1901.
[238]S.C. 1902, c. 20.
[239]Minutes of Special Meeting, November 1908.
[240]Minutes of CPSO, July 1909. By this time some provinces were beginning to make reciprocal arrangements with each other. A scheme of Maritime reciprocity was in operation, and Ontario decided to send a delegation to discuss an arrangement with Manitoba.

further objections, which were met by an amending Act passed in 1911.[241] Finally in 1912 the Ontario Legislature passed an Act which provided that the Canada Medical Act should apply in this province.[242]

1912-1939

This period saw the development of the present-day attitudes of the College. During its first fifty years it had been concerned with creating a profession of medicine — that is, establishing a body of practitioners with a uniform education and a code of professional behaviour. Now that it had to some extent achieved this end, it was free to turn its attention to evaluating and perhaps influencing the pressures exerted on doctors by forces outside the profession. It was well that it could do so, for there was a quantity of legislation that might incidentally affect a doctor's practice, and it was left to the College to act as a liaison between the governments and the profession. For example, both the Narcotic Drug Control Act[243] and the Temperance Act[244] restricted the doctor's right to prescribe certain drugs. The Council began to print warnings about these Acts in the Annual Announcements, and it was expected to discipline those who infringed or ignored their provisions.[245]

The Council also took the initiative in seeking greater benefits for the College's members. When the Workmen's Compensation Act was first passed,[246] although it provided that doctors should treat injured workers and report on their condition, it made no provision for the payment for these services. The Council felt that payment should be made by the Board, rather than leaving the doctor to collect from the injured workmen, and this feeling was shared by the Ontario Medical Association.[247] The two groups joined forces in 1910 to place their views before the government.[248] This alliance led to the creation of a Joint Advisory Committee, which consisted of representatives of the Council, of the OMA, and of the universities and which henceforth usually acted as liaison for all these groups on medical matters before the Legislature. The Committee's first efforts at persuasion were successful, and in 1917 the Workmen's Compensation Act was amended to provide that the Board should pay doctors for their services to injured workmen.[249]

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[241]S.C. 1911, c. 16.
[242]S.O. 1912, c. 29.
[243]S.C. 1911, c. 17.
[244]S.O. 1916, c. 50.
[245]This duty was somewhat difficult in the case of the Temperance Act. Although it seemed that the Council was expected to restrain College members from indiscriminate prescribing of liquor, it was hindered in the performance of this duty by a case which held that a doctor did not infringe the Act so long as he was willing to swear that each of his prescriptions was needed by the patient. (Minutes of CPSO, 1920.)
[246]S.O. 1914, c. 34.
[247]The Ontario Medical Association is the voluntary organization of medical graduates.
[248]Minutes of CPSO, July 1910.
[249]S.O. 1917, c. 34.

It seems fair to say that Council members generally felt that the purpose of the College was to protect the public by setting the standard to be met by all those who professed to be able to cure their illnesses, and that they had few selfish motives in seeking to eliminate other healing cults. At any rate it was during this period that they made the most determined attempts to ensure that only College members could practise medicine. When it became clear that this end was impossible, they devoted their efforts to preventing the drugless practitioners (as the new cults came to be called) from either abusing or extending their privileges. As well they were concerned that members of the College should not resort to the devices used by the drugless practitioners nor claim the miraculous "cures" that they did. The Council upheld these policies even in the face of public opinion.

As the Council became more involved with the behaviour of practising doctors, the original function of setting educational standards and examining medical graduates declined in importance. Education was governed largely by the universities and examinations by the Medical Council of Canada.

Council Reorganization

During the conflict with the Medical Defence Association, the size of the Council had been substantially increased to provide for a majority of territorial members.[250] Although its members accepted the principle that the practitioners should control the Council, they felt that its present size made it both unwieldy and uneconomic. In 1911 a Special Committee on Council reorganization was appointed.[251] The Committee recommended that the Council be halved to include ten territorial representatives, two homeopaths, and one representative from each university actually engaged in teaching medicine.[252] In 1914 the Council adopted these recommendations but, at the request of the government, delayed seeking legislation on the matter.[253] This reluctance on the part of the Legislature was due in part to the pressures of the war; but its main cause was the appointment in 1915 of the Hodgin's Commission, set up to study all aspects of the healing arts.[254] The Commission also felt the Council should be reorganized, but along different lines than those the Council proposed.[255]

Finally, towards the end of 1919, the government introduced a Bill[256] which

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[250]S.O. 1893, c. 27.

[251]Minutes of CPSO, July 1910.

[252]The Committee's report was printed in the 1912 Minutes, with an invitation for comments from the members of the College.

[253]Minutes of CPSO, June 1918.

[254]Order in Council, September 29, 1915.

[255]This report recommended that the representatives of the practitioners be elected from among the profession at large in a manner analogous to the Law Society Benchers. The Council objected to this plan, believing that it would lead to a reduced attendance of meetings, with the majority of those who did attend being from Toronto. (Minutes of CPSO, 1918.)

[256](1919) Fifth Session of the Fourteenth Legislature of the Province of Ontario, Bill 160.

would reform the Council in a manner different from that recommended by either the Council or the Commission. The measure provided for three representatives from the University of Toronto and one from each of Queen's, Ottawa and Western universities, two homeopathic members, and eight territorial representatives. According to the report of the debate,[257] the powers of the Council would be restricted by the creation of an Advisory Medical Committee to deal with all questions affecting the practice of medicine.[258] The Council objected to the Bill, and it was withdrawn on April 15 with the excuse that it had been hastily prepared and was *thought* to represent the views of the medical profession.[259]

After averting this legislative disaster, the Council abandoned its attempts at structural reformation in favour of concentrating its energies on limiting the scope of the drugless practitioners. It was not until this problem was settled by legislation in 1925 that the Council again took up the matter of its reformation, only to shelve it once more on the grounds that it was not an opportune moment to seek legislation on the matter.[260] No further action was taken until 1931, when the Legislative Committee was authorized to submit the Council's scheme together with other amendments to the government.[261] This action resulted in the first major change in Council structure since the Medical Act of 1887.

The new Act[262] followed the Council's recommendations, with one exception. Homeopathic representation was reduced to one,[263] and the fifteenth member of the Council became the Minister of Health.[264] The Council opposed the addition of the Minister on the grounds that the Council should be composed only of those who were connected with the profession.[265] This objection seems somewhat inconsistent with the Council's oft-expressed wish for closer liaison with the government; for the new system would virtually ensure that all government measures would be discussed with the members before presentation to the Legislature, thus preventing such emergencies as had arisen in 1919.

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[257]*Globe*, Toronto, April 11, 1919.

[258]The Bill attempted to implement only one recommendation of the Hodgin's Commission: that Council rules and regulations be subject to the approval of the Lieutenant Governor in Council. Perhaps because of the change in government in 1920, no legislation based on the Commission's recommendations was ever introduced.

[259]Minutes of CPSO, June 1919.

[260]Minutes of CPSO, 1927.

[261]Minutes of CPSO, 1931.

[262]S.O. 1932, c. 22.

[263]At the time there were about twenty homeopaths practising in Ontario.

[264]Thus the Council was to be composed of the Minister of Health, ten territorial representatives, one homeopath and three university representatives from Toronto, Queen's and Western. The Act provided for representation from these universities only; but in 1934 an amendment was passed which allowed any university that had instituted a medical course to send a representative to the Council.

[265]At this time, however, the Minister was a doctor.

Education

At this time the Council became less active both in influencing education and in conducting examinations. In the field of education, it continued to leave the initiative with the universities. Rather than forcing the universities to accept new concepts, it approved what the universities decided to do — as, for example, an accelerated course instituted during the war.[266] Similarly all the universities were giving a six-year course before the Council made it obligatory.[267] The Council was not completely quiescent in this transfer of control. In 1924 a Special Committee was set up to study matriculation and curriculum requirements.[268] This was a feeble effort at best, since the report expressly stated that the curriculum was not to be binding on the medical faculties.[269] Later the 1932 Act limited the Council's control over matriculation standards by providing that it could only lower them from arts to pass matriculation, should it so desire.[270]

Together with the loss of influence over educational policies went the decline of the College's examining function. At the beginning of its history, the College felt it could not certify competence to practise unless the student had passed Council-administered matriculation examinations and two further sets of examinations on his medical knowledge. As the quality of education in Ontario increased, these requirements were reduced so that by 1911 the Council demanded that its registrants write only three examinations at the end of their course.[271] When the Medical Council of Canada was created, it was planned that only students who might wish to practise in other parts of Canada would write its examinations, while the majority would continue to sit for those set up by the provincial Councils.[272] The opposite occurred, however, and by 1933 so few students were writing the Ontario examinations that it was decided to abandon them entirely in favour of the Dominion examinations.[273] But by 1938 even the Medical Council of Canada had decided to accept the universities' examinations rather than set their own.[274]

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[266]Minutes of CPSO, June 1917.

[267]Minutes of CPSO, June 1920.

[268]Minutes of CPSO, June 1924.

[269]*Ibid.*

[270]S.O. 1932, c. 22, s. 9.

[271]Minutes of CPSO, July 1911.

[272]As early as 1916, some Council members felt there should be only one set of examinations, and in 1917 a resolution to this effect was passed. No steps were taken to implement the resolution, however, and in 1919 a motion that the Ontario examinations be withdrawn was lost. (Minutes of CPSO, 1919.)

[273]An Act that would allow this was passed in 1934 (S.O. 1934, c. 29). It provided that the Council could pass a by-law requiring that applicants for registration must pass the Medical Council of Canada examinations. Once this by-law was in effect, the Ontario Council need not hold examinations if Dominion examinations were held within the province. This by-law (No. 26) was passed in 1934 also.

[274]The Council examiners would read and mark the university examinations, however, and it would be their evaluation that would determine the candidates' standing.

Reciprocity

Plans to devise an acceptable reciprocal arrangement with Great Britain had been put aside while a system of Dominion reciprocity was being developed. But when the Canada Medical Act was passed, attention turned towards England once more. Ultimately, though, the formulation of an agreement was hastened by the outbreak of war.

The first and immediate necessity was to make provision for Canadian doctors to practise legally in the British armed forces and in hospitals in England. A Special Meeting of the Council was held in December 1914 to discuss the matter.[275] Early in 1915 an Act[276] was passed which allowed the Council to register doctors listed in the British Medical Register, and similar legislation was passed by the British Parliament. Thus was reciprocity instituted.

During this period, the regulations concerning American students were relaxed. In 1916, as a result of representations from the American Medical Association and the Ontario universities, the requirement that graduates of approved schools in the United States spend one term at an Ontario university was dropped; the only remaining requirement, then, was that these men write the Ontario examinations.[277] In 1920 the Executive Committee was authorized to enter into reciprocal relations with the National Board of Medical Examiners in the United States.[278]

For a time it seemed as if the Medical Council of Canada might take over foreign as well as domestic reciprocal arrangements. In 1919 the Ontario Council approved an amendment giving this power to the Dominion Council.[279] But in 1921 the General Medical Council of Great Britain decided that it could not accept the certificate of the Medical Council of Canada as adequate qualification,[280] and the arrangements with the several provinces remained in effect. This situation had one unfortunate result, in that students could evade the MCC examinations and yet be entitled to register in other provinces by registering in Great Britain under various reciprocity agreements. In 1922 the Council tried to combat the situation by requiring British registrants claiming reciprocity to show that they had practised in England for five years,[281] but by 1924 it was admitted that this requirement could not be successfully enforced. In 1925 the Council called for all the provinces to confer on the problem, but the call went unheeded.[282] By 1926 the situation

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[275] Minutes of CPSO, Special Meeting, December 1914.
[276] S.O. 1915, c. 28.
[277] Minutes of CPSO, 1916. In 1918, however, for some reason the requirement of spending one term in school was reinstituted. The next year in his address the President raised an objection to the rule and, although apparently no regulation was passed by the Council, the one year requirement did not appear in the regulations set out in the Annual Announcement.
[278] Minutes of CPSO, June 1920.
[279] Minutes of CPSO, June 1919.
[280] Minutes of CPSO, June 1921.
[281] Minutes of CPSO, June 1922.
[282] Minutes of CPSO, June 1924.

had led to such bitterness that the Council President said that since the war there had been no advantage in British reciprocity except for those from other provinces who wished to use it as a means of registering in Ontario.[283] Finally it was decided to terminate the agreement and revert to the prewar situation, whereby British registrants were required to write the Council examinations.[284]

Drugless Practitioners

The proliferation of the drugless healers was the greatest problem facing the College at this time. After the failure of the attempt in 1912 to have the osteopaths join the College on a basis similar to that applied to homeopaths, it seemed more and more to the members of the Council that the best solution lay in defining the practice of medicine to exclude these practitioners. In 1914 a Special Committee was appointed to formulate such a definition.[285] After considerable discussion and consultation with their legal advisor, the Council presented their proposed definition to the Hodgins Commission.[286] Their ideas so impressed the Commissioner that he recommended that the practice of medicine be legislatively defined. The definition he suggested was accepted for the most part by the Council.[287]

Meanwhile the Council had not abandoned its attempts to restrict the scope of the drugless healers' practice by other methods. For example, in 1915 it recommended that the Public Health Act be changed to provide that where a deceased person had been treated within ten days of his death by an unlicensed practitioner, a coroner should investigate the case.[288] Although a Committee was formed to

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[283]Minutes of CPSO, June 1926.

[284]Minutes of CPSO, June 1927.

[285]Minutes of CPSO, July 1914.

[286]Minutes of CPSO, June 1917.

[287]Minutes of CPSO, June 1918. The definition read:

> The term 'practice of medicine' shall mean and include:
>
> (1) The use of any science, plan, method, system or treatment with or without the use of drugs or appliances for diagnosing, alleviating, treating, curing, prescribing or operating for any human disorder, illness, disease, ailment, pain, wound, infirmity, injury, defect or deformity or physical or mental condition.
>
> (2) Diagnosing, alleviating, treating, curing, prescribing or operating for any human disorder, illness, disease, ailment, pain, wound, infirmity, injury, defect or deformity or physical or mental condition, and the holding out, offering or undertaking by any means or method to do any of the foregoing and including midwifery and the administration of anaesthetics.
>
> (3) Any manipulative or other kind of physical or mental treatment whatsoever, suggested, prescribed or advised, for body or mind, administered to or operated upon or intended to be followed by the patient himself or herself, intended or professing immediately or ultimately to benefit the patient, and the holding out, offering or undertaking by any means or method to use the same or to diagnose.

Hodgins Report on Medical Education in Ontario, Queen's Printer, Toronto, 1917, p. 66.

[288]Minutes of CPSO, June 1915.

study the methods of the "practic" schools of thought,[289] the Council consistently refused to approve any such schools[290] and indeed opposed their foundation.[291]

In 1920 a change in the government aroused new hope in the Council that legislative restrictions might be placed on the practice of the drugless practitioners. Later, at a meeting in 1921, Premier Drury assured the Joint Advisory Committee that he realized that the present legislation was unsatisfactory in this regard and that he would listen with interest to any suggestions they might make.[292] The Council hastened to recommend a restrictive definition,[293] but the Premier made it clear that he would not agree to any amendment that would completely prohibit irregulars from practice. He felt that in time of sickness and distress a person was entitled to treatment from those in whom he had placed his confidence.[294] Later in the session, however, he agreed to present a measure that defined the practice of medicine and also gave some protection to certain other types of healers.[295] This Act defined the practice of medicine as follows:

> Every person shall be deemed to practise medicine within the meaning of this Act who holds himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, disability or physical condition, or who shall either offer or undertake by any means or method to diagnose, treat, operate or prescribe for any human disease, pain, injury, disability or physical condition.[296]

The Act provided, however, that this definition was not to apply to persons who were practising as osteopaths, chiropractors or drugless healers on January 1, 1923, provided that they registered with the Provincial Secretary within sixty days of the Act coming into effect.[297] In addition, the Lieutenant Governor in Council was given the power to make regulations governing the entry of others into these fields, but such regulations had to be approved by the Legislature.

Although the College felt that the drugless healers still constituted a menace to the public, the new measure received almost unanimous support. The Council was happy with the definition; the osteopaths and most of the chiropractors approved

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[289]Minutes of CPSO, June 1915.

[290]*Ibid.*

[291]Minutes of CPSO, July 1915.

[292]Minutes of CPSO, June 1921.

[293]Minutes of CPSO, June 1922.

[294]Minutes of CPSO, June 1923.

[295]S.O. 1923, c. 35.

[296]This definition was taken from the New York Medical Act (Minutes of CPSO, June 1923).

[297]There were several other groups to whom the definition did not apply. These included optometrists, chiropodists and faith healers, as well as doctors from outside the province invited for a consultation, dentists, and persons administering home remedies.

the provisions concerning them;[298] and the measure passed through the Legislature without much debate.[299]

In spite of this general approval of the Act, it did not have the desired effect, partly because a number of difficulties were encountered in its administration. These difficulties were mainly the result of the failure to make regulations governing the registration of the drugless practitioners. For example, in a 1924 prosecution, the magistrate found the defendant not guilty of unauthorized practice on the grounds that he was free to practise until such regulations were published.[300] Instead of attempting the almost impossible task of drafting acceptable regulations, in 1925 the Legislature decided to institute a completely new system of controlling the drugless practitioners. The 1923 legislation was repealed[301] and a separate Drugless Practitioners Act was passed,[302] giving these men a governing board of their own. Although the repeal deprived the medical profession of its definition of the practice of medicine, another of its ambitions was achieved by an amendment to the Medical Act.[303] This amendment provided that anyone not registered under that Act was prohibited from using the titles "Doctor", "Physician" or "Surgeon" as a means of indicating that his occupation was to treat the sick.

This prohibition soon became one of the College's chief weapons in the fight against encroachments by the drugless practitioners.[304] In 1927 a test case was brought against an osteopath and a chiropractor, each of whom had used the title "Doctor".[305] The magistrate[306] found that they were using the title as a scholastic designation only, but an appeal was taken to Middleton, J. A., who reversed the magistrate's decision and entered a conviction.

Although the Council came to accept that these men must be allowed a limited form of practice, not all the drugless practitioners were satisfied with their status. In 1932, the Joint Advisory Committee became aware through the Minister of Health that the osteopaths intended to ask the Legislature for further privileges,

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[298]*Globe,* Toronto, April 27, 1923. Premier Drury stated that these groups had been consulted in the formulation of the Bill and were satisfied with it.

[299]The *Globe* report on May 1, 1923 read:

> Discussion on the Premier's measure was unexpectedly short, there appearing to be general agreement among the members that some restrictions should be placed upon the rights of individuals indiscriminately to practise medicine and also that there should be some standardization and legal recognition of existing drugless healing professions.

[300]Minutes of CPSO, June 1924

[301]S.O. 1925, c. 48.

[302]S.O. 1925, c. 49.

[303]Minutes of CPSO, June 1924.

[304]In 1932 the penalties for breach of this section were substantially increased. In addition an action to recover fees for medical services was made dependent upon the production of a certificate of registration. (1932) 22 Geo. V., c. 22.

[305]*R. v. Pocock & Ellison* (1927) 60 O.L.R. 459.

[306]This was the same magistrate who had refused to convict in 1924 (see above).

including the rights to use the title "Doctor", to issue prescriptions and death certificates, to treat their patients in public hospitals, and to use provincial laboratories.[307] In January of 1933 the Committee met the Premier to press their objections against these privileges being granted,[308] but in March a Private Bill was introduced on behalf of the osteopaths.[309] The effect of this Bill would have been to amend the Medical Act so that osteopaths would be entitled to all the privileges conferred by it and to representation on the Council.[310]

The measure met a great deal of opposition in the House. The Minister of Health, Dr. Robb, opposed it not only on the grounds that he felt it was against the public interest, but also on behalf of the other classifications of drugless practitioners who felt that it would give an advantage to one member of their group. The Chairman of the Legal Bills Committee felt, however, that the measure had enough merit to warrant the consideration of his Committee.[311] At its hearings the Council, supported by the universities and the hospitals, objected to the Bill as a lowering of the entrance standard of the College and a danger to the health of the Ontario public.[312] These objections prevailed to the extent that the Committee recommended that no further action be taken during the Session but that the matter be given further study during the recess.[313]

Before the next Session the Joint Advisory Committee learned that the osteopaths intended to present a Bill setting up a separate College of Osteopathy and once again protested to the Premier, this time arguing that there should not be two standards of medical education in the province.[314]

In January 1934, all the groups concerned met before the Select Committee set up to study the matter, and once again both the doctors and the other types of drugless practitioners opposed the osteopaths.[315] The Chairman, who seemed to be in sympathy with the osteopaths, questioned the College about its position regarding the profession. The College stated that it would have no objection to admitting

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[307] Minutes of CPSO, 1932.

[308] Minutes of CPSO, 1933.

[309] (1933) Fourth Session of the Eighteenth Legislature of the Province of Ontario, Bill 108.

[310] The Bill provided that the osteopaths would elect five representatives to the Council. With regard to education and examinations, they were to have privileges analogous to those of the homeopaths — i.e., they could be educated in the United States and they were to take certain examinations before osteopathic examiners. The Bill would also have removed restrictions on the use of the term "Doctor".

[311] *Globe*, Toronto, March 27, 1933.

[312] Minutes of CPSO, 1933.

[313] *Globe*, Toronto, April 11, 1933. Their report of the Committee's Report read: "While the bill be not further proceeded with, it recognized the principle of the bill possesses merits which are deserving of consideration and a select committee was set up to study it during the recess."

[314] Minutes of CPSO, 1934.

[315] *Ibid.* At this meeting it was not clear whether they were discussing the Bill introduced in 1933 or the new measure which had not yet been introduced. When asked, the osteopaths said that they would rather come under the Medical Act than set up their own College.

a doctor who met its requirements but who wished to practise osteopathy as a specialty. Immediately the osteopaths claimed that this was precisely their objective, and the meeting was adjourned so that an investigation could be made of osteopathic schools to see if they met the standards required for approval by the Council.[316] Two professors set out to visit the most prominent American osteopathic schools and reported that their standards were not high enough for their graduates to be allowed to write Council examinations. This information was conveyed to the Select Committee and no further discussion on the matter took place (although it was suggested), nor was any legislation introduced on behalf of the osteopaths.[317]

A final attempt at enlarging their privileges was made by the osteopaths in 1938, when a Bill was introduced that would allow them to use the title "Doctor".[318] Although this measure was considered in Committee, the protests made there by the Council so impressed the members that it was never reported.[319] In all their attempts during the 1930's to enlarge the scope of their practice by seeking legislation, the only successful one was an amendment to the Workmen's Compensation Act that allowed the Board to pay drugless practitioners for services rendered.[320]

Discipline

From the time it had first obtained the power to discipline College members, the Council had been reluctant to erase practitioners' names, since it often felt the penalty to be too severe. This reluctance increased as new legislation created offences which required disciplinary action on the part of the Council. In most cases the Council followed its original policy of taking no further action if the offender apologized.[321] By 1919 it was clear that the Council should be given some other sort of penal power, and a section was inserted in the Statute Law Amendment Act that allowed the Council to suspend a member's licence for a specified period

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[316]While this investigation was being carried out, another meeting was held so that the chiropractors could set forth their views. They felt entitled to the same privileges on the grounds that their training was as good as the osteopaths', that their examinations were the same, and that they were more popular with the public since there were more chiropractors than osteopaths.

[317]In 1934 the chiropractors introduced a series of Bills that would result in giving them the same privileges sought by the osteopaths. They would have altered the Public Health Act, the Drugless Practitioners Act, the Medical Act, and the Workmen's Compensation Act. The amendment to the Medical Act would have removed the restrictions on the use of the title "Doctor".

The account of the attempt at legislation in 1934 was taken from the Minutes of CPSO, 1934.

[318](1938) Second Session of the Twentieth Legislature of the Province of Ontario, Bill 27.

[319]Minutes of CPSO, 1938.

[320]S.O. 1937, c. 82.

[321]For example, where there had been a single offence against the Narcotic Control Act, the Council was in the habit of regarding the matter as a piece of carelessness; if the offender apologized, it would take no further action. One case was disposed of in this manner in 1915, and three in 1916.

of time, instead of expelling him from the College.[322] They began to impose suspensions immediately and, in that year, two men were suspended, each for two months, because of breaches of the Temperance Act.[323]

Although the bulk of discipline cases concerned statutory offenders,[324] the most important problems faced by the Discipline Committee during this period related to the tendency of certain doctors to experiment along lines considered unprofessional. For example, in 1924 three doctors were called upon to explain their use of the Abrams machine (a quack diagnostic device), although no penalty was imposed on any of them.[325]

The most celebrated case of this type was that of Dr. Hett, who claimed that he had invented a serum that would cure cancer. He was summoned to appear before the Discipline Committee in 1937 because he refused to reveal the formula of his cure or to submit it for testing. Nor was he able to offer any proof of its efficacy. On these grounds it was found that he had promised a cure which he could not give, and that this constituted improper conduct and deserved erasure.[326] Dr. Hett appealed the decision in the Court of Appeal.[327] The Court considered that the definition of unprofessional conduct in Allinson was the proper one; that is, what the reasonable doctor would consider to be misconduct in his brethren. On this basis the appeal was rejected.

Undeterred by this decision, Hett applied to the Council for reinstatement, and a special meeting of the Council was held on February 5, 1938 to consider the matter. The members' decision was that Hett might be readmitted only if he divulged the formula of his serum and submitted it for investigation. The doctor then said that he would not reveal the formula until the serum had been investigated by some sort of government body. The case had attracted the attention of the public, and the Premier immediately announced that he was appointing a Cancer Commission to investigate alleged cancer cures.[328] Undoubtedly aware that he had a great deal of public support, Hett decided to ignore the Council's requirements and petitioned for a Private Bill that would reinstate him.[329] Before the Bill was considered, however, he had given an undertaking to the Minister of Health that he would disclose his formula to the newly appointed Cancer Commission. The Bill was withdrawn[330] and Dr. Hett was reinstated on April 2nd, 1938.[331]

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[322]S.O. 1919, c. 25. This provision was the only one that survived the Government Bill that would have reformed the Council.
[323]Minutes of CPSO, 1919.
[324]For example, in 1925 there were twenty-eight cases involving statutory breaches before the Committee.
[325]Minutes of CPSO, June 1924.
[326]Minutes of CPSO, 1937.
[327]*Re Hett & CPSO* [1937] O.R. 582.
[328]Minutes of CPSO, 1938.
[329]March 16, 1938.
[330]April 5, 1938.
[331]Minutes of CPSO, Special Meeting, April 2, 1938.

1940-1967

Most of the problems facing the College during these years involved public relations. Conditions after World War II forced the College to formulate new policies for the registration of foreign medical graduates which did not always win the approval of a public anxious to reduce the doctor shortage. Increased disciplinary powers turned public attention to the power of the College over its members and led it to expect the Council to police matters which that body felt were outside its jurisdiction.

Changes in the Registers

In 1963 the retiring President said that the Council was in a period of transition with vastly expanding administrative duties.[332] But although more personnel were added to the staff, the structure of the Council had remained essentially the same. It was not until 1960 that the homeopathic representative was dropped and an increase made in the number of territorial representatives.[333]

The main reflection of modernization of the College was the proliferation of registers for special purposes. The first was the Specialists' Register established in 1944.[334] The Council members had discussed setting up specialist qualification in 1925 but had abandoned the idea when their lawyer said he felt that they had no power to enter this field.[335] This difficulty was overcome by the 1944 Act which permitted the Council to define the classes, to set the qualifications, to provide for the designation of specialists, and to revoke this designation. By this time, however, the Royal College of Physicians and Surgeons had been in existence for over ten years and had set qualifications for specialist registration within that body. In 1946 the Ontario College adopted these requirements for its own Specialist Register,[336] thus making it superfluous from its very beginning. Finally in 1962[337] it was abandoned.

There had always been a number of doctors in the province who were not registered. These included foreign-trained teachers in medical schools, and foreign students taking specialist training. In 1946 the Council decided to register teachers with the designation "teacher" on the General Register.[338] The next year, however, the College's lawyer pointed out that the Council could not properly register those trained outside the United Kingdom, nor could it prevent them from going into practice once they were entered on the Register.[339] At this time, because it was

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[332]Minutes of CPSO, April 1963.
[333]S.O. 1960, c. 66.
[334]S.O. 1944, c. 35. Of course, those with higher qualifications had always been entitled to have them entered in the General Register on payment of an additional fee.
[335]Minutes of CPSO, 1925.
[336]Minutes of CPSO, 1946.
[337]Minutes of CPSO, November 1962.
[338]Minutes of CPSO, 1946.
[339]Minutes of CPSO, 1947.

the practice to enter internes on the General Register, the problem arose of how to cope with foreign doctors who were doing postgraduate training in Ontario and who were not entitled to such registration. The need for a type of registration limited both in time and scope was clear.

The first step towards establishing such a system was taken with the creation of an Educational Register in 1952.[340] The statute authorizing it provided that an interne employed in a public hospital[341] might be entered on this Register if he had sufficient academic training. Registration enabled him to practise within the hospital where he was employed, and once the employment terminated the Registrar was entitled to remove his name from the Register.

It remained the practice, however, to give teachers and government employees stationed in Ontario temporary certificates and to place them on the General Register. This continued until 1960, when legislation was passed authorizing the creation of a Temporary Register.[342] The Council had power to make regulations respecting the persons who were entitled to be so registered, and concerning the conditions and limitations of such registration. Registrants, of course, were entitled to practise only in accordance with these conditions, and failure to do so entitled the Registrar to erase the miscreant's name. The aim in setting up this Register was to provide a system of registration for those with academic appointments or serving with the federal government, but soon many other uses were found for it. It became the practice to permit some doctors whose registration had been suspended in disciplinary proceedings to register on the Temporary Register and to practise within certain limits.[343] At the beginning of 1967 it was decided that foreign graduates working in hospitals that did not offer an approved training course (and thus were not entitled to register on the Educational Register) might be entered on the Temporary Register.[344] Finally, in 1966 provision was made to transfer foreign teachers to the General Register if they displayed clinical competence over five consecutive years.[345]

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[340]S.O. 1952, c. 55.

[341]At first the Educational Register was open only to internes at Class "A" hospitals under the Public Hospitals Act, but in 1953 the Act was amended to include hospitals operated by the Canadian government. In 1956 the provisions were enlarged to include any hospital approved under the Public Hospitals Act, the Mental Hospitals Act, or an isolation hospital under the Public Health Act, a sanatorium under the Sanatoria for Consumptives Act, and hospitals operated by the Canadian government. In 1965 the Act was amended to include private hospitals under the Private Hospitals Act.

[342]S.O. 1960, c. 66.

[343]For example, in 1964 it was decided that the proper way to deal with a member addicted to drugs was to remove him from the General Register to the Temporary Register, where he would have full rights to practise except that he could not prescribe narcotics. Minutes of CPSO, April 1964.

[344]Minutes of CPSO, April 1967.

[345]Minutes of CPSO, November 1966.

Foreign Doctors

Until the Second World War most of the doctors who wanted to immigrate to Ontario came from Great Britain or from the United States. By that time, however, men from many countries were seeking admission to the College. Such applicants had always been required to pass the qualifying examinations taken by Ontario graduates before admission,[346] and in 1938 a requirement was added that each applicant must have taken out naturalization papers.[347] In 1940 this requirement was amended to provide that a certificate of British citizenship would be sufficient.[348]

The provision was not so severe as it seems, however, since it could be waived by the Council under certain circumstances.[349] In spite of the citizenship requirement, the influx of European-trained men after the war forced the Council to turn its attention to evaluating the quality of their education. In 1948 it was suggested that each should spend at least one year at an Ontario university,[350] but no action was taken on the matter. Instead it was announced that the considerations in granting an Enabling Certificate, which allowed the applicant to write examinations, would be education, both preliminary and medical; experience in medicine; and personality, as determined during a personal interview.[351] By the next year it was recognized that the system was not very practical, since it was very hard to obtain

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[346]British doctors, like all the other foreigners, still had to write the examinations. With the outbreak of war, discussions about reciprocity with Britain were once again suggested, but it was decided to grant their physicians temporary registration instead. (Minutes of CPSO, 1941.) In 1944 an Act was passed authorizing the Council to set up a Special Register which would allow its registrants to practise in Ontario during the war and for a month thereafter. After the war, first it was decided to postpone any talks concerning reciprocity because of the unsettled state in Britain caused by the introduction of the National Health Scheme (Minutes of CPSO, 1947) and then because of the problem of aliens' temporary British registration becoming permanent (Minutes of CPSO, 1949).

[347]Minutes of CPSO, 1939. United States graduates were exempted from this requirement.

[348]Minutes of CPSO, 1940.

[349]Although no reasons were mentioned for imposing these citizenship requirements, it was perhaps in part due to unease over the European situation and a desire to feel that the College was registering only those whose interests were identified with Canada. Of course, these feelings were intensified with the outbreak of war.

On the other hand the desire expressed by the New Brunswick Medical Council in 1944 not to admit aliens to the prejudice of Canadian-born students may also have influenced the Ontario Council, although this seems unlikely because of the shortages caused by the war.

[350]Minutes of CPSO, 1948.

[351]Minutes of CPSO, 1948. During this period, there was a great deal of popular agitation in favour of allowing European doctors to practise. For example, in the *Globe and Mail,* Toronto, October 6, 1947, Rabbi Abraham Feinberg wrote an article urging that these doctors be admitted to fill the shortage. The Liberal Women's Association passed a resolution to the same effect at their annual meeting. *Globe and Mail,* Toronto, October 22, 1947. In an editorial the *Star Weekly* urged a welcome for alien doctors (December 27, 1947). The Dominion government gave "active consideration" to a plan to import such doctors to relieve the shortage *(Globe and Mail,* Toronto, October 24, 1947). Their excuse for not doing so was that Canadian doctors woud not cooperate. At a Senate hearing, the Deputy Minister of Mines and Resources told the Committee that the doctors had done all they could to stop the plan. *Globe and Mail,* Toronto, June 15, 1948.

information on the quality of the education of many of the applicants. It was suggested that the universities be responsible for educational evaluation; but they could not undertake this task, since they were fully occupied with the problem of dealing with returning veterans.[352] In 1950 the regulations were revised to permit only graduates of approved schools to apply for Enabling Certificates. In addition applicants were required to be proficient in English and, if considered necessary, to complete a year of internship.[353] The next year the citizenship requirement was relaxed to provide that the applicant need show only intention to become a citizen.[354]

This system of evaluating immigrant doctors also proved unsatisfactory, and a good many continued to fail the Medical Council of Canada's examinations. In 1952 a sub-committee of the university representatives on the Council was formed to study the situation further.[355] This group recommended that the determining criteria should continue to be academic qualifications and personality, but that only graduates of certain schools at certain times should be considered and that they should have to pass examinations in English and the basic sciences. In addition, they felt that certain men — such as those who had graduated during the war — should be required to complete more than one year as an interne and be reported on by the staff.[356] In 1954 the recommendations concerning the English and basic science examinations were implemented,[357] and after 1956 two years of internship were required.[358] In 1956 the citizenship requirement was dropped as being unenforceable.[359]

These regulations established the basic pattern for foreign graduates seeking registration, and from then on the Council has been more concerned with evaluating the various schools. For example, in 1963 restrictions were placed on the graduates of Greek, Hungarian, Italian and German schools, since they had a high failure rate;[360] but in 1965 it was announced that their graduates would be considered once more.[361] This problem was to some extent eliminated

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[352]Minutes of CPSO, 1949.

[353]Minutes of CPSO, 1949.

[354]This requirement applied to all doctors who intended to practise in Ontario, even if they had already passed the MCC examinations using an enabling certificate from another province. Minutes of CPSO, 1950.

[355]Minutes of CPSO, 1951.

[356]Minutes of CPSO, 1953. The report would be in the form of a questionnaire to be answered by the hospital staff.

[357]Minutes of CPSO, 1954.

[358]Minutes of CPSO, 1956.

[359]Minutes of CPSO, 1956. The unenforceability was probably due to the influx of Hungarian doctors after the revolution. The College apparently made great efforts to find hospital positions for all these men.

In a somewhat similar position to the Hungarians were the refugee doctors from China. However, enabling certificates were refused to them unless they had been recommended by the authorities in Hong Kong.

[360]Minutes of CPSO, November 1963.

[361]Minutes of CPSO, April 1965.

by the introduction of the examinations of the Educational Council of Foreign Medical Graduates.[362] In 1964 the internship requirements were relaxed so that British, American and some Commonwealth graduates who had interned for one year in their own country need not spend a further period in an Ontario hospital.[363] On the other hand, it was decided in the same year that no Indian graduates could be sure of qualifying for a certificate until the medical schools in that country had been assessed.[364]

At first, naturally enough, attention was concentrated on how to license the graduates of approved schools, and any others who wished to practise in Ontario were presumably left to make what arrangements they could for advanced standing in a Canadian medical school. In 1967, however, the principles of a program that would lead to the registration of graduates of unapproved schools were approved.[365] There were two methods leading to registration: the first was to complete the final two years of the medical course in a Canadian university; the other, to receive specialist certification in paediatrics or internal medicine, provided that the applicant had had at least two years' training in a Canadian university-affiliated hospital and that he had received an unqualified recommendation from the staff of that hospital.[366] But although regulations were prepared to implement these principles, none had appeared by December 1967.

Other Practitioners

The Council continued to oppose any new privileges sought by the drugless practitioners. Although in 1940 it was sympathetic to the desires of the physiotherapists for separate legislation,[367] it opposed both the Chiropody Act[368] and the increased privileges given optometrists in 1944.[369] When the Psychologists Registration Act[370] was passed in 1960, the Council wanted assurances that the measure would not allow any psychologist to treat a mentally ill person except at the request of a qualified practitioner.[371]

At the hearings of the Hall Commission the College objected to the podiatrists'

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[362]This is a body set up by the American Medical Association, which administers English and basic science tests to graduates of approved schools.

[363]Minutes of CPSO, April 1964.

[364]*Ibid.*

[365]Minutes of CPSO, April 1967.

[366]It was felt that these specialties would provide the broadest training in basic medicine. In addition, an unacceptable graduate could be registered in the Special Register to practise only pathology, radiology or physical medicine, provided that he had qualified for that specialty with similar Canadian training to that required of those seeking full registration as internists or paediatricians.

[367]Minutes of CPSO, 1940.

[368]S. O. 1940, c. 11.

[369]S. O. 1944, c. 45.

[370]S. O. 1960, c. 90.

[371]Minutes of CPSO, 1960.

brief, which called podiatry a "specialty of medical practice".[372] In the same year the College complained to the Minister of Health of its difficulties in administering the Medical Act in the face of other statutes that licensed cultists to practise a healing art.[373] Special committees were formed regularly to report on the various groups of drugless practitioners, and their reports were consistently unfavourable. All these objections and reports, however, met no response, and the only further deterrent that was established was an increase in the penalties for breaching the Medical Act.[374]

Discipline

During the past twenty-five years, the College has taken a more active part in assuming responsibility for its members' professional behaviour. Included in its concern is the practitioner's mental state, and in 1942 legislation was enacted that provided for erasure once a doctor had been found mentally ill or incompetent.[375]

The Council also made greater efforts to carry out its disciplinary duties. For example, in 1947, it asked the Attorney-General to advise the Council of any conviction against a medical practitioner.[376] Before this time the practice had been to rely on some fellow practitioner to bring the matter to the Council's notice.

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[372]In 1963 the following resolution was passed embodying the College's policy towards drugless practitioners:

> Carried unanimously: That podiatrists and any or all other groups or individuals desiring to practise the art of medicine, surgery or midwifery in Ontario be required to do so in accord with and under the terms of the Medical Act and any and all amendments thereto; and further, that groups or individuals being licensed to apply certain specific types of treatments such as physiotherapy, massage, etc., or to perform specific procedures such as optometry, lab. techniques, X-Ray photography, or to treat specific superficial areas of the body, such as the foot or the scalp, shall be registered by such license to limit their practise or functions strictly to the area or procedure or treatment specifically designated in their license; and further, if and when such groups are granted licensure and while they are practising under such license, the respective groups shall be required to discipline the individuals within the respective group to the extent that any attempt to practise medicine, surgery, or midwifery, or attempt to make a diagnosis before, during, or after the carrying out of their privilege under their license shall result in the withdrawal of license from such individuals, or from the group as a whole, if and when they fail to maintain such control and discipline of individuals within their respective groups, and, further, that this Council recognizes that it should be made a criminal offence for anyone to establish themselves in Ontario in the practise of the healing arts and as an habitual practitioner for the purpose of gain or makes or attempts to make a diagnosis unless and until he or she has passed exams of a standard equivalent to those established and maintained by recognized universities in the province of Ontario.

[373]For example, the Special Committee established in 1960 investigating osteopathy reported that the education of osteopaths would not warrant their inclusion in the Medical Act.

[374]In 1949 the penalties were doubled ranging from fifty dollars to $100 for the first offence and from $200 to $500 for subsequent offences. In 1963 the penalties were again increased to a range of fifty dollars to $500 for the first offence; from $500 to $1,000 for a second offence; and a $1,000 fine and not more than six months' imprisonment for any subsequent offence.

[375]S.O. 1942, c. 46.

[376]Minutes of CPSO, 1947.

At the same time, the Council realized that many complaints were made against doctors that were not properly the subject of disciplinary action. Through the Joint Advisory Committee, it aided in the creation of the local Mediation Committees to deal with these problems.[377]

As it became more interested in its disciplinary functions, the Council also became more willing to define what would be considered unprofessional conduct. In 1955 regulations concerning advertising were published for the first time.[378] There was also an increased willingness to broaden the concept of misconduct. For example, in 1949 the Council decided to leave the question of the propriety of fee-splitting to the voluntary organizations.[379] By 1955, however, the Council warned that fee-splitting was not considered desirable practice,[380] and in 1957 it unsuccessfully sought legislation to outlaw it.[381]

The Council also examined the new method of carrying on a practice within an incorporated clinic.[382] Although they did not forbid it, the Council members feared it might lead to the problem of non-professional control over practice. To prevent this result they issued the following edict:

> No member shall practise so as to be unable to give full force and effect to his training, experience or judgement, nor practise subject to authority and control, express or implied, of any person not a member of the said College.[383]

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[377]Minutes of CPSO, 1953. These Committees were made up of members of the local voluntary Association associated with the OMA. When a complaint was received by the Committee, its members sought to resolve it by interviews with the doctor and patient concerned. If this failed, the question was referred to the OMA Executive Committee.

[378]Minutes of CPSO, 1955. The restrictions imposed are standard in most professions. They concerned newspaper advertising (a maximum of three announcements of opening a practice of a certain size and content), professional needs, telephone listings and stationary. It was also recomended that prescriptions be on the doctor's own letterhead, but this was not mandatory. In 1957 restrictions were imposed against unauthorized interviews appearing in the papers.

[379]Minutes of CPSO, 1949.

[380]Minutes of CPSO, 1955. The prohibition against fee-splitting was opposed by some doctors. When a London hospital instituted an "audit plan" (which required doctors using it to submit audited accounts, so that it would be clear whether fee-splitting had taken place), three doctors issued a writ against the hospital asking that the by-law be declared invalid (*Globe and Mail,* Toronto, June 29, 1955). Le Bel, J. dismissed the case, however. He thought that fee-splitting was an illegal act. He said: "When a patient consults his doctor, he is entitled in equity to assume that his advisor has no pecuniary interest in the surgical operation he advises or the choice of a surgeon, or in the amount of the surgeon's fee. If the medical advisor has a pecuniary interest — and a fee-splitting arrangement is such an interest, he must disclose it or fail in the discharge of his duty to his patient, and by failing in that way, he acts illegally in my opinion." *Globe and Mail,* Toronto, June 24, 1956.

[381]Minutes of CPSO, 1955.

[382]The problem was originally brought to the attention of the Council by some remarks of McLennant in *Re Carrulliers Clinic Ltd. v. Herdman* [1956] O.R. 787. The judge felt that perhaps clinics should not be incorporated since the shares might pass to laymen who would be interested only in profits.

[383]Minutes of CPSO, 1960.

Later they were to apply the same principle to third party practice — i.e., payment for medical care to a patient by a third person, as in insurance schemes. In 1963 the principle was elaborated to provide that no doctor should practise under conditions that would allow unreasonable control over such matters as the time spent with a patient, his diagnostic requirements, or the method or type of treatment advised.[384]

As the Council began to make new pronouncements regulating the physician's conduct, it became less satisfied with the legislation concerning discipline. The first revision of these statutes was enacted in 1960.[385] This Act dealt mainly with the procedure for dealing with mentally ill doctors. It provided that when a man had been certified to be incompetent under any statute, because of mental illness, habitual drunkenness or drug addiction, it was the duty of his Committee to inform the Registrar, whereupon the incompetent's registration would be suspended until he was declared once more capable by a judge. Where a doctor entered a mental hospital, either voluntarily or under a judge's order, and remained there for more than sixty days, his registration was to be suspended; reinstatement was not automatic on release. The discharged doctor had to apply to the Council, which would determine his competence to practise at a hearing. The Council could also decide to enter the applicant on the Temporary Register.[386]

The Act also added the power to erase for "improper conduct in a professional respect", as well as for "infamous or disgraceful" conduct. This was the beginning of a period of great semantic confusion for the Council. In 1962 it was decided to amend a resolution condemning the sale of accounts by doctors to a third party so that it declared such conduct to be "improper in a professional respect" rather than "infamous, disgraceful, and improper".[387] In 1963 another Act was passed[388] to reorganize disciplinary procedures, but these changes dealt only with "professional misconduct". This was defined as being guilty, in the opinion of the Discipline Committee or the Council, of "misconduct in a professional respect or conduct unbecoming a medical practitioner". The definition also included a conviction for an indictable offence or a suspension of privileges under

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[384]Minutes of CPSO, April 1963.

[385]S.O. 1960, c. 66.

[386]The Act also gave the Council power to make regulations governing the use of the word "clinic" in connection with a medical practice. This included the power to decide the number and type of physicians required on the staff, and the services they could supply. Apparently no regulations have yet been established.

[387]This pronouncement was the result of a firm setting up in Toronto that bought doctors' unpaid bills at a 14 per cent discount. The OMA objected to the business on the grounds that it gave a commercial flavour to the doctor-patient relationship and hindered the settlement of disputed bills. (*Globe and Mail,* Toronto, March 13, 1962.) In time however, the company worked out a plan which was approved by the College. It would send out the bill for five months and if the money was not collected, would then return the bill to the doctor. (*Globe and Mail,* Toronto, June 6, 1962.)

[388]S.O. 1962-63, c. 92.

the Narcotics Control Act,[389] or the Food and Drug Act;[390] but it was only in the case of a conviction for a criminal offence (whether indictable or not) in connection with the practice of his profession that a doctor's name was to be erased without a hearing. Is it any wonder that for the next few years the Council was unsure of what came within the discipline provisions?

The amendment also changed the functions of the Discipline Committee and the penalties it could impose. The Committee was allowed to hear discipline cases and hold inquiries into applications for reinstatement.[391] When it found that a man was guilty of professional misconduct, it could either reprimand the offender (and if it was deemed warranted, enter the fact of the reprimand on the Register) or suspend him for a period of up to three months. If neither of these penalties was considered appropriate, the Committee would refer the matter to the Council. In this event the Council could refer the matter back to the Committee for further consideration; impose any penalty available to the Committee; or suspend the offender for longer than three months; or order his name stricken from the Register. The Discipline Committee reported to the Council concerning applications for restoration to the Register, and it was for the full Council to decide the result.[392]

About this time an unfortunate case caused the public to take an interest in the conduct of doctors and an even greater interest in their competence. A series of articles followed, calling upon the College to act to prevent incompetent doctors from practising. Both Dr. Glenn Sawyer of the OMA[393] and Dr. J. C. C. Dawson, the College Registrar, expressed the opinion that the Act did not allow the College to discipline incompetents. At the April 1964 meeting,[394] the Council decided that professional misconduct could include negligence or incompetence, but decided also to declare no policy as to what constituted either, judging each case on its own merits.[395] The following year they asked for and received an

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389S.C. 1960-61, c. 35.

390S.C. 1962-63, c. 38.

391The conduct of the hearing remained essentially the same. The exception was the admission of evidence. Generally, the reception of evidence was to be governed by the Evidence Act and the rules applying to civil cases in Ontario; but evidence that was otherwise inadmissible could be received, if the Committee felt it was desirable. In addition, any communication purported to be signed by a practitioner and any account on his account forms became prima facie evidence that he signed the document or authorized the account.

392The amendment also changed the appeal provisions. An appeal from the Discipline Committee was heard by the Council, and an appeal from the Council, by the Court of Appeal. For the first time any two Council members could appeal the Discipline Committee's decision to the Council.

393*Globe and Mail,* Toronto, March 4, 1964.

394March 4, 1964. Dr. Dawson pointed out that until 1960 discipline could be applied only for "infamous and disgraceful conduct in a professional respect", covering no more than the most serious offences, and that in 1960 "improper conduct" had been added to cover less serious offences. He did not, however, give his views as to how any of these definitions were incorporated into the concept of "professional misconduct".

395Minutes of CPSO, April 1964. At the same meeting it was stated that only medical men should be allowed to determine the competence of another medical man.

amendment to the Medical Act which defined professional misconduct as including "a finding by the Discipline Committee of conduct unbecoming a medical practitioner or incompetence".[396]

This amendment aroused considerable controversy in the Legislature, since the N.D.P. saw it as an attempt to deprive both coroners and civil courts hearing malpractice cases from having the power to question a doctor's competence.[397] Their spokesman, Mr. Renwick, said they had no other objection to the measure and Dr. Matthew Dymond assured him that the amendment would not have this effect. He said that the Act did not enlarge the College's powers at all, but merely clarified the somewhat obscure wording of the old Act.[398]

The Act also made some changes in the disciplinary procedure. A new Complaints Committee was to be formed, with the power to consider complaints made against doctors and, if it was decided that further action should be taken, refer them to the Discipline Committee.[399]

In 1966 again an amendment was passed which enlarged the functions of the Discipline Committee.[400] It could now suspend a member for twelve months, and also impose a suspended penalty on such terms and conditions as it deemed advisable. Finally, where it referred a case to the Council for sentence, it was to recommend what it felt would be the most appropriate penalty.

396S.O. 1965, c. 69.

397These suggestions were based on some remarks made by the Supervising Coroner, H. B. Cotnam, at an inquest in Hamilton reported in the *Globe and Mail,* Toronto, October 27, 1964. It said:

Police Yourselves Doctors Warned — "Unless doctors police themselves more stringently, some other body will take over and do it for them."

"Once we show the public we mean business and are doing our best to protect them in all respects from incompetence, and they are entitled to this protection, then their confidence in the medical profession will be quickly restored."

"As an indirect result," he added, "coroners will not be faced with so many embarrassing inquests involving their colleagues."

"There is no need to press the panic button or lash out in all directions like a wounded animal, just because the public image of the medical profession was somewhat smeared and tarnished as the result of wide publicity from a few recent inquests."

"It would be more to the point to consider whether criticism was justified and, if so, what measures were required to prevent repetition."

"The problem could not be cured by holding in camera inquests and telling the press and the public nothing that would be disastrous for the profession."

"The better way was for doctors to show they intended to clean their own house by more rigid control over the privileges to practise and by weeding out incompetence."

398Debates of the Legislature of the Province of Ontario, March 23, 1965.

399The Council and Executive Commitee retained the power of referring complaints to the Discipline Committee also. Under the regulations complaints were first to be considered by the Registrar who would decide if they should go to the Complaints Committee. Then the Committee would investigate and make its decision. The Registrar could, however, refer the matter to the Council or Executive Committee, notwithstanding the Committee's decision.

400S.O. 1966, c. 85. This Act also amended the appeal provisions once again, so that appeals from the Council went first to the High Court and then to the Court of Appeal.

Chapter 3 Dentists

The First Act

During most of the nineteenth century, dentistry in Ontario was largely an itinerant profession. Since such restorative procedures as dentists could perform were very expensive, there were very few communities that could support the full-time services of a trained dentist. Most practices consisted mainly of extractions.

Three types of training were available. The most usual was a period of articling under the aegis of experienced practitioners. Some supplemented this training with attendance at a medical school, and a small minority attended the Dental College in Baltimore.[1] Although more dentists than is generally realized had some training, the itinerant nature of the profession attracted a sufficient number of quacks to make a trip to the dentist a thing to be contemplated only when in severe pain.

To meet the threat that unqualified men posed to professional dentistry a Dr. B. W. Day asked the more reputable practitioners to attend a meeting in Toronto on January 3, 1867.[2] This meeting resulted in the formation of the Ontario Dental Association.[3] During the proceedings, Dr. Day argued that legislation was necessary to regulate the profession; and although there was a good deal of opposition to the notion, ultimately a committee was appointed to draft a bill.[4] A second meeting of the Association was held in July to consider the results of the committee's labours; and a third meeting was called for January 21, 1868, only to be adjourned so that those present could attend the Legislature to hear the introduction of the Dental Act.

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[1] J. H. Johnson, DDS, "A Perspective of the Development of Dentistry in Ontario", *Oral Health,* Vol. 57, No. 313, May 1967, p. 317.

[2] *Ibid.,* p. 333.

[3] According to its constitution the purposes of this Association were to promote ". . . professional and social intercourse among dental practitioners in the Province of Ontario, Dominion of Canada, and to encourage a disposition for investigation on their part in every direction which relates to the principles and practice of the profession and collateral sciences".

[4] There had been a few earlier indications of a desire for legislation. In 1860 a petition sponsored by a Montreal practitioner was signed by twenty Ontario dentists, indicating that they were in favour of requiring future practitioners to pass an examination administered by a Board of Dentists. (J. H. Johnson, *op. cit.,* p. 329.)

On the other hand, G. L. Elliot, a member of the first Board, reported that such early attempts as he had made towards this end had met with almost universal opposition. *(Ibid.)*

Probably the main reason for opposition was that many practising dentists were afraid they would lose the fees they were paid by their students.

The Act incorporated certain named practitioners into the Royal College of Dental Surgeons of Ontario.[5] These men were to serve also as a temporary board of trustees and examiners until a regular Board of Directors could be elected.[6] This Board was to govern the College and would consist of twelve men elected every two years by the Licentiates of the College.[7]

The Board was to have the power to make regulations concerning the education of dental students. This included the power to establish a dental school at Toronto, and to fix both the curriculum and the length of time each student must spend articled to an established practitioner.

The main function of the College, however, was to license those whom it judged competent to practise dentistry. By the Act's grandfather clause, any practitioner might be registered who had been in an established office practice for five years before the Act was passed.[8] Those who had practised itinerantly for a similar period were entitled to registration if they could pass an examination set by the Board.[9] Otherwise a licence could be obtained only by spending the required period articling[10] and then passing the Board's examination. In addition the Act provided that the Board should be satisfied of the candidate's integrity and good moral character before granting a licence.

There was no provision for a register such as that kept by the Council of Medical Education and Registration; but a certificate of licence was to be given to each dentist, to serve as evidence of his qualification. Furthermore, the Registrar was to submit an annual list to the Provincial Secretary, giving the names of all those to whom a licence had been granted during the past year.[11]

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[5]S.O. 1867-68, c. 57. Although he approved of the concept of incorporating the profession, Sir Henry Smith thought giving the College the title of "Royal" was going too far. *Globe,* Toronto, February 11, 1868.

[6]Strictly speaking, the men named were the only members of the College until 1877, when an Act was passed which provided that all holders of its licence should be members.

[7]In the original Bill, part of each Board was to be chosen by the retiring Board, presumably to ensure continuity; but since several members of the Legislature thought that it would become a self-perpetuating body under such a system of appointment, the section was changed. *Globe,* Toronto, February 24, 1868.

[8]Such men also had to be British subjects.

[9]Apparently the stringency of the grandfather clause reflected the dentist's desire to ensure that none but the properly qualified would be allowed to practise, and it also showed their distrust of the itinerants.

In the House, Dr. Baxter, a medical man who had been involved in many of the Medical Bills, said that he felt it was objectionable to require those who were practising to write examinations; but he said he would support the clause, since he understood that most dentists had expressed their willingness to sit in order that the system might have a fair start. *Globe,* Toronto, February 28, 1868.

[10]The first regulations passed in 1869 provided that this period be two years. During this period the student was also required to read certain texts and perform certain dental operations. By-law 6-1869.

[11]This list continued to be supplied until 1965, when an Act was passed repealing the requirement. S.O. 1965, c. 26.

There was also provision for cancelling a licence if the Board were satisfied that its holder was guilty of acts detrimental to the interest of the profession, although no procedure for making such a determination was laid down. The Board also could restore a licence upon such terms and conditions as it saw fit.

Dentists were given one year from the passage of the Act to register, and then it became an offence to practise dentistry without a licence, for hire, gain, or hope of reward. It was an offence as well to claim falsely to hold a licence, or to use any title or description that would imply such a qualification. In addition to establishing these practices as offences, the Act paralleled the Medical Act by providing that an unqualified person could not recover in court for any dental services that he had rendered.

Finally the Act provided that the Board could make regulations for the government and guidance of the Board, the College and the profession, and for the proper administration of the Act. The regulations were to be published in the *Ontario Gazette* and were subject to cancellation by the Lieutenant Governor.

1868-1910

The profession was now faced with the task of organizing itself in accordance with the Dental Act. A difficult task at best, it was complicated by a split between the practitioners of eastern and western Ontario in the sponsoring Ontario Dental Association. The western practitioners felt that the eastern dentists had too much authority in both the Association and the College. They were likely correct in the assumption, since it was the men from the east who had been the main planners.[12]

Nevertheless, the profession continued to organize. The first announcement of the College defined "established office practice" which would entitle a practitioner to registration without examination. Such a practitioner must not have more than two offices in addition to his regular place of practice.[13] All other candidates for a licence were required to undergo an examination.[14] According to a

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[12]*The Ontario Dental Association, A Profile, The First 100 Years,* Toronto, 1967, p. 15. The rivalry between east and west also is reflected in the Act. The names of two Ontario dentists practising in Western Ontario were added to the original Board of Directors before it was presented to the Legislature in order to satisfy the men from the west.

[13]Annual Announcement, 1868.

[14]A Bill (No. 67) was introduced during the 1868-69 Session, providing that any dentist with an established office might be licensed without undergoing an examination. But it was discharged after consideration by the Select Committee, presumably on the grounds pointed out by Dr. Baxter during debates on the original Bill, that the majority of the profession were willing to undergo the examination.

contemporary account, however, the test was not very difficult, and most of those who attempted it passed.[15]

At this time there was only one dental school in North America, at Baltimore, and such academic education as dentists received was obtained through courses in medical schools. The Act gave the College the authority to establish and operate a school at Toronto, and at the first meeting of the Board of Directors, a Special Committee was set up to investigate the advisability of such a school.

The question aroused a great deal of conflict. It was clear that some provision for education was needed; but many dentists who had a good source of income from the payments made by students articling in their offices, and others who feared that the profession would become overcrowded, opposed a school. Ultimately the Committee reported that it felt that it would be premature to establish a school within the next three to five years.[16] Presumably, it felt — influenced by Dr. Day — that the College should be given a chance to become solidly established before inaugurating a scheme that would meet so much opposition.

Two members of the Committee, however, had informed the other members of their intention of establishing a private school, and in the fall of 1868 the Canada College of Dentists opened its doors to seven students. At first the College opposed the new school. In a letter to the *Globe* in November, 1868, Dr. Day pointed out that the school did not enjoy the support or approval of the Board and could only be regarded as a private school which must support itself.[17] But by January of 1869, a reversal had taken place in the Board's attitude, and arrangements were made to amalgamate the Canada College of Dentists and the College school, which at the time had only a formal existence. The combined school began operations in the fall of 1869[18] with two students. At the end of the first term, the school was closed since it could not pay its debts.

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[15]In *An Account of My Stewardship* (Toronto, 1870), G. L. Elliot describes the granting of licences as follows:

> And then commenced the grinding cut of stabs of basic magnitude. This was done, gentlemen, by granting licences after a most *thorough* and *searching* examination to dentists who had previously given the exorbitant time of 3 to 6 weeks studentship in the office of some clever and experienced practitioner . . . . It was a regular pitch and toss game. But as a general thing, the Board secured the thirty dollars and the delinquent went on his way rejoicing.

The caustic tone of the speech is probably due to the fact that the speaker, a charter member of the College, had had a falling-out with the Board over education; but it is likely that many ill-qualified men were registered.

[16]J. H. Johnson, *op. cit.*, pp. 338-339.

[17]Although the College dissociated itself from it, the school was owned by two Board members and its staff consisted of four Board members.

[18]It was supposed to open on October 1, but the opening was postponed to December 15.

A Committee was set up to make arrangements to carry on a private school; but these plans did not materialize, and students continued to be trained by articling.[19]

In spite of the dissention over the school, by 1872 the College was so well established and its members agreed unanimously on so many matters that the Board felt it could apply for legislation to correct what it felt were the evils of the original Act. The resulting Act reduced the number on the Board of Directors from twelve to seven and the number of meetings from two to one a year.[20] Two further examinations were authorized. If it wished, the Board could require that students pass a matriculation and a preliminary examination before entering articles.[21] Unlike licensing examinations, which were given by the Board, these were to be administered by a Board of Examiners appointed by the Board. More generous provision was made for licensing under the grandfather clause. Those who had been practising dentistry in Ontario when the original Dentistry Act was passed, or who had practised outside Ontario for three years, need no longer complete the articling period but were entitled to a licence on passing the registration examination.

The College, naturally enough, was concerned that there should be some method of distinguishing properly qualified dentists from quacks. They felt that one way of accomplishing this was to provide the dentist with a professional title. An attempt at such a provision was found in the original Bill presented in 1872. It proposed that a dental school be established and that the Board and the professors of this school compose a Senate, which could confer the degree of Doctor of Dental Surgery. The degree would be conferred on anyone who had completed two full terms at a recognized dental school, or who had completed one term at such a school or two terms at a medical school, and had been in practice for five years. It could be conferred also on a dentist who had no academic training but who had had an established office practice for ten years. The Legislature did not approve of the scheme, however, and it was withdrawn on the Premier's advice that the Bill would not be passed unless it were altered.[22] Thus the College was left with only the authority to establish a school as a means of ensuring professional competence.

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[19]The whole account of the first attempts at education are taken from J. H. Johnson's article in *Oral Health* (*op. cit.*). Much of his information is taken from G. L. Elliot's *An Account of My Stewardship* (*op. cit.*).

[20]In the Bill as presented, the Board's regulations would not have to be gazetted. Presumably the Board felt that the original requirement was inserted because it had the power to set monetary levies, and that if such a power were given up, the gazetting requirement would be also. However, the original Bill was altered so that the College lost the power to set fees, but still had to gazette its regulations. S.O. 1872, c. 34.

[21]By-law 10, 1872 provided that these examinations must be passed before the student entered articles. They were held at Toronto, Kingston and Hamilton. The By-law was repealed in 1878 and replaced by the requirement that students have high school graduate certificate.

[22]*Globe*, Toronto, January 31, 1872. A clause exempting dentists from jury duty and providing for compensation for appearing as witnesses also was withdrawn.

The school was finally opened in 1875 with two lecturers and five assistants. The College granted the school $150 per year, but the management of its financial affairs was in the hands of its professors, who were to report annually to the Board.[23] An infirmary serving the public was set up in connection with the school, so that its students could gain practical experience. The course then consisted of one four-month term, plus two years of articling.[24] In 1889 the course was increased to two terms;[25] in 1885 the period of articling required was increased to two and one-half years, and in 1888 to three and one-half years.[26]

The Board, however, had not given up its hope of conferring some distinguishing degree on members of the College. In 1877 an Act was passed that allowed the Board to appoint practitioners of three years' standing as Fellows of the College, provided they had passed a qualifying examination.[27] There is no record, however, that any such fellows were appointed. Rather the College decided to confer the degree of Master of Dental Surgery on those who passed their examinations.

Although many were registered in the early period who may not have been well qualified, the state of the profession before 1868 was such that there were a great many tramp dentists who could not pass any examination at all. These men naturally continued their business, and the College was faced with the problem of prosecuting them. The original Act provided that to practise without a licence was an offence punishable by a fine of twenty dollars, but it left the manner of prosecution to anyone who cared to institute a suit. The 1872 Act provided that the Board could prosecute in its own name. It was not until 1877 that the problem was fully treated. An Act passed that year provided that prosecutions were to be by way of a summary conviction proceeding before a Justice of the Peace.[28] The burden of proof as to his licence or other qualifications was on the defendant, and any fine recovered was to be paid to the Board. If the fine was not paid, the defendant could be sent to jail for one month, or until the fine was paid.

The next legislation concerning dentistry was passed in 1886.[29] This Act gave the College the right to hold real estate to the annual value of $5,000. Probably mindful of the problems of the College of Physicians and Surgeons, the Act provided that any property held was to be used only for purposes connected with the College.

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[23]By-law 15, 1878.

[24]By-law 13, 1876.

[25]In that year, regulations were made concerning the admission of non-resident dentists to the licensing examinations. Such an applicant must have spent three years studying dentistry and have graduated from a recognized dental school. In addition he must have spent three years in actual practice.

[26]By-law 20, 1888.

[27]S.O. 1877, c. 23.

[28]S.O. 1877, c. 23.

[29]S.O. 1886, c. 30.

Although the original Act had provided that the Board could declare a man's licence forfeit if he acted in a manner detrimental to the profession,[30] the 1886 Act clarified this power by providing that the Board could make regulations concerning discipline.

In addition, this amendment increased the scope of the offences under the Act. Originally the prohibition had been against unauthorized practice of the "profession of dentistry", but it was extended to forbid the performance of any dental operation or prescription of any dental treatment for any patient by an unqualified person. The amendment was intended to deter those men who operated as the servants or agents of qualified dentists.[31] One of these agents had been paid by receiving a large rent for his premises, and the amendment therefore provided that such men could not provide dental services for hire, gain, or hope of reward by way of fees, salary, rent, percentage of receipts, or in any other form whatever.

Although the College school had prospered since 1875, the profession was aware of all the advantages a university training would offer its students, and negotiations were begun towards affiliating the College school with the University of Toronto. The 1886 Act authorized the College to make this arrangement and the next year the University Senate agreed to the affiliation, whereby the university undertook to teach part of the course.

Another amendment to the Act was passed in 1891, providing that a Board of Examiners might be appointed to administer the licensing examinations, although the Board of Directors was to continue to decide their content.[32] An amending Act also was passed the following year, which made some changes in the constitution of the College.[33] The Board of Directors was to be elected according to territorial districts rather than from the province at large, and the dental faculty could elect an eighth member to the Board.[34] An annual fee of one dollar to three dollars was authorized. This fee could be collected in Division

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[30]The only action the Board had so far taken in regard to discipline was to pass a by-law in 1872 providing that a licence would be forfeit where its holder was convicted of an indictable offence.

[31](1886) Third Session of the Fifth Legislature of the Province of Ontario, Bill 153, explanation of s. 10.

[32]S.O. 1891, c. 38.

[33]S.O. 1892, c. 33.

[34]The Bill as originally presented by the College made no provision for school representation. Although this may be an indication of the same kind of school-practitioner animosity that existed among doctors, it seems unlikely. A more reasonable explanation is that since most of the teachers at the school were also in practice (and since the full-time teachers were employed by the university to teach academic subjects), it was felt that the school did not need any special representation.

Court, and any dentist in arrears could not use the Court to sue for payment for his services. Finally, the Act allowed the Board to make regulations concerning the registration of non-resident dentists.[35]

During this period the Board of Directors seems to have had little trouble in administering the Act. In spite of the changes they had sought in the Act regarding prosecution, in 1890 it was decided that there were not enough illegal practitioners in Ontario to justify hiring an inspector. In 1893 a committee was set up to study methods of prosecution. It recommended that someone be hired in each district to undertake prosecutions at a fee of forty dollars per conviction, but in 1897 it was decided that the district representatives should act as prosecutors.

One problem that dentists shared with all the licensed professions was attempts by persons who had not the proper qualifications to gain the right to practise by Private Act of the Legislature. The Board naturally opposed these efforts, but since the Private Bills Committee was quite often sympathetic to the applicant, usually its opposition resulted in only limiting the privilege granted. For example, in 1894 when a half-trained student was named in a Private Bill which would allow him to practise, the College's representations reduced the privileges granted him to the right to practise in the Rainy River district for only one year, at the end of which time he would have to write the licensing examinations.[36]

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[35]The Board had already arrogated this power to itself in 1879, when it published its first regulations on the subject. In 1888 a regulation was made that provided that dentists who wished to practise in Ontario would be admitted to the College on the same terms on which Ontario dentists were allowed to practise in the jurisdiction from which they came. In 1892 the first distinction was made between those who had left Ontario for their education and those who had always lived in foreign jurisdictions. It was provided that those who had matriculated in Ontario but had followed a dental course at a reputable dental school outside Ontario might be admitted to the senior year of the Ontario school, provided that the prior course had lasted three and one-half years and had included two full courses of lectures.

After the 1892 Act, these regulations were revised to provide that any dentist trained outside Ontario must take the senior year of the dental course provided that he had already taken a three and one-half year course. Otherwise he must complete the whole Ontario course. In 1902 the ruling concerning those who had gone from Ontario and those who were never in the province was revised. Complete newcomers could enter the senior year if they had graduated from a recognized school, whereas students who had gone from Ontario must have taken a three-year course. An exception to this requirement was made where the Ontario "citizen" had practised outside Ontario for three years. In 1908, this period was increased to four years, and it was further provided that where a dentist had been in practice for eight years he would be admitted to the licensing examinations without having to attend one course of lectures. In 1911 where these practice requirements had not been met, Ontario residents were required to pay $250 plus the tuition fee before they could enter the senior year.

Similarly, Ontario residents seeking advanced standing at the school were required to pay half the tuition fees of the years that they had missed.

In 1922 the requirement that dentists educated outside Ontario attend the senior year was dropped. Instead they were required to write the final examinations of the RCDS curriculum, but they were entitled to attend such lectures of the senior year at the College as they desired.

[36]S.O. 1894, c. 104.

After its affiliation with the university, the dental school was still supervised closely by the Board. In 1893 the faculty was relieved of responsibility for its financial affairs, and the Board undertook to collect the fees and pay the professors. A close eye was kept on the infirmary also. There was some resentment towards this clinic on the part of local practitioners, since they felt its free treatment attracted many of their patients. In an effort to appease them in 1896, the College decided that those who could afford to would have to pay for any aid received there.

Attention was given also to the quality of education provided. The College joined the National Association of Dental Faculties, a body which consisted mostly of American schools and which sought to improve and unify dental education.[37] In 1899 the Council of the Association recommended that the dentistry course consist of three academic terms of seven months, and in April 1901 the College decided to increase its term to four months.

At this time the College began to interest itself in the possibility of reciprocal registration. In 1898 the National Association of Dental Faculties set up a committee to work with a European committee that was assessing the standard of education in various countries. In 1900 negotiations were entered into with Great Britain, but only the Glasgow College was willing to enter any arrangement. By 1903 even these negotiations had broken down as a result of pressure on Glasgow from England, and the Board then turned its attention to interprovincial reciprocity. In 1900 it was decided to set up a Dominion Dental Council along the lines of the Canadian Medical Council. This organization did not suffer the setbacks that plagued the Medical Council, and by 1903 its structure was established. In 1905 the Ontario College agreed to license dentists holding its certificate without any further examination.

Generally speaking, the dentists were modest in their demands for legislation, and most of what they asked was granted them. The only exception was a Bill prepared in 1900 which would have enlarged the College's power with regard to prosecutions[38] and discipline.[39] This was the period when the Patrons were hotly opposing any enlargement of the powers given to the professions, and so it was decided not to bring the measure before the House.[40]

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[37]Minutes of RCDS, March 1894.

[38]Like the students in the medical fifth year, articling dental students often practised on their own account, and several had been prosecuted. The dentists felt the way to deal with this was to provide that students should not be remunerated for any services they provided. The Board also sought to remove the qualification that practising was unauthorized only when it was "for hire, gain, or hope of reward". Finally they wanted dentists exempt from jury duty.

[39]Although the College seems to have been fairly free from disciplinary problems (the only case of erasure the author found was in 1898 where a dentist was convicted of procuring an abortion), the Board wanted the authority to cancel a licence or to suspend a practitioner for unprofessional conduct as was allowed the Medical Council.

[40]Minutes of RCDS, February 1900.

1911-1934

Discipline

A new Dental Act was passed in 1911.[41] Although it was called a re-enactment, it made few substantial changes except in the area of discipline.[42] In spite of their failure to obtain legislation in 1900, the Board of Directors had passed a by-law setting up a Discipline Committee in 1908. Any action taken as a result of this Committee's recommendations probably could have been successfully attacked, since the Committee purported to have powers that could be conferred only by legislation. For example, the by-law provided that the Committee could order the production of documents relating to the cause, a provision which was clearly not within the power of the College since such an order can be made only under the aegis of a court. Any uncertainties in the situation, however, were cleared up by the 1911 Act, which set out a complete new code of discipline. It provided that the Board could suspend or cancel a licence if its holder had been convicted of an indictable offence[43] or if he had been guilty of infamous, disgraceful, or improper conduct in a professional respect. It was specifically stated in the Act that a dentist could be found guilty of such misconduct, even though he had been convicted of a criminal charge on the same matter.

The Board was to appoint and maintain a Discipline Committee of three to five members to ascertain the facts in any case under inquiry. An inquiry could be ordered on the Board's own motion and was necessary when requested by any four members of the College.[44]

When the Committee was to hold an investigation, fourteen days' notice and a statement of the subject of the inquiry were to be given to the accused member. The meeting was to be held in the district where the member resided; and if he failed to attend, the Committee was entitled to proceed in his absence. Both the member and the Committee were entitled to counsel, and to examine and cross-examine. Evidence was to be given under oath, and either party could obtain from the High Court subpoenas compelling the attendance of witnesses or the production of documents.

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[41]S.O. 1911, c. 39.

[42]There were several minor changes, however. For example, the restrictions as to the value of land held by the College were removed. Territorial representatives to the Board must reside in the territory they represented, and teachers at the school of dentistry could not represent a territory. In addition, the fines for offences under the Act were increased to fifty dollars for a first offence and $100 for subsequent offences.

[43]Disciplinary proceedings resulting from convictions for indictable offences were subject to the usual proviso that such proceedings should not be held when the conviction was for a political offence outside British possessions, or when the nature or the circumstances of the offence were such that it ought not to disqualify a man from practice.

[44]Under By-law 47, complaints had to be made to the Secretary of the Board in writing and verified by statutory declaration.

The Committee was to report its findings to the Board, which would act upon them as it felt just. If the complaint were found to be frivolous, the Board could pay the member's costs; but if his licence were cancelled or suspended, the Board could order that he pay the costs of the hearing. A member who had been disciplined could appeal within a month to the High Court, by the same procedure as that used for an appeal from the County Court. The Board itself could order restoration of a certificate upon any terms and conditions it felt just. Finally, the Board and members of the Discipline Committee were protected from actions brought against them for their conduct performed in good faith while carrying out their duties under the Act.

As soon as the Act was passed, the Board appointed a Discipline Committee.[45] It was to handle all breaches of the Act, whether they involved prosecution of an unauthorized practitioner or discipline of a member, so that enforcement would be more efficient. Thus in 1913 it was the Committee that hired a detective agency to handle three prosecutions.[46]

The Committee's task with regard to discipline was somewhat simplified, since the dentists, unlike most professional organizations, had enacted a by-law which largely defined what would be considered misconduct.[47] However, it was on occasion called upon to express its views on matters affecting the advisability of certain actions. For example, in 1913 it advised against instituting a tariff system of fixed fees which each dentist would charge on penalty of being fined.[48]

On other occasions the Committee sought the guidance of the Board on the attitudes it should take. In 1918 — indeed, throughout this period — the members were very much concerned to establish the limits of permissible advertising. It was not until 1935 that any governing regulations were published under by-law 43,[49] and because of this lack of regulations the Committee was very cautious in disciplining advertisers. In May 1922 it warned several dentists that

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[45]Minutes of RCDS, 1911.

[46]Minutes of RCDS, 1913.

[47]By-law 43, 1910. This by-law prohibited dentists from behaving in a manner that would prevent them from giving full effect to their training, experience and judgement. This included prohibitions against practising under the direction of, or for the benefit of, a person not a dentist; practising under the name of a person who was not a dentist; allowing a person not a dentist to perform dental procedures while in his employ; or allowing such a person to practise for his benefit.

[48]Minutes of RCDS, 1913. The Committee thought that any such arrangement would be inadvisable, ". . . as they are illegal, being in restraint of trade, are contrary to any accepted code of ethics and are likely to be considered by the public as in direct violation of the privileges and responsibilities conferred upon us by the Legislature when they entrusted the public to our tender mercies".

[49]In 1942 regulations were added concerning telephone listings and advertising in programs, year books, and so on. In 1931 a by-law was passed that governed the situation where one dentist took over the practice of another. After six months, no indication that the other man was associated with the practice must remain, except one notice that the man in charge was the successor of the earlier dentist. By-law 12(4), 1931.

their licences would be suspended if they persisted in advertising objectionably. Since they continued, a Special Meeting was called in October of the same year to consider their conduct. Although the Board decided that the advertisements constituted improper conduct, it was decided to impose no punishment since there had been no prior charges of that nature.[50]

In 1924, however, the Committee was instructed to proceed against certain advertisers.[51] Again, no punishment was imposed on these men, since they undertook to cease advertising in an objectionable manner.[52] When one of these men broke his undertaking,[53] a Special Meeting of the College was called on September 23, 1924, and the Board suspended his licence until he gave a satisfactory undertaking that he would not repeat the offence. Instead of giving such an undertaking the dentist, Dr. Davidson, appealed, first to the High Court and then to the Court of Appeal.[54] Both courts upheld the College. The Court of Appeal decided that the test of improper conduct was whether the conduct was such that it would be reasonably regarded as improper by the defendant's colleagues.[55] Thus, in the opinion of the Court, although there was no code of ethics regarding advertising, the Board was able to say that the conduct was improper; and it was not for the Court to interfere with their judgement.[56]

In 1929 a circular was sent to the profession warning practitioners of what would be considered acceptable advertising.[57] It limited the size and number of signs a dentist might display and prohibited the use of words such as "painless extractions", which were used in an attempt to attract patients. Only dentists who confined their practice to one area were permitted to call themselves specialists.

The regulations were strictly enforced. Where a member was at fault, first an attempt was made to reach an amicable solution; but if the member would not

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[50]Minutes of RCDS, October 1922.

[51]Minutes of RCDS, Special Meeting, April 1924.

[52]Minutes of RCDS, Special Meeting, May 1924.

[53]The objectionable advertisement appeared in the Hamilton *Spectator* on May 27, 1924 as follows:

> TEETH $15.00 Single Set (Workmanship Guaranteed) (Photograph of a double set of teeth) I am making a special 'ten-day offer' to give you the opportunity to get teeth. Special prices for crown and bridgework, Extractions and Fillings also. Dr. B. G. Davidson, 54½ James St. North, opposite Arcade. Open evenings. Regent 3786. Graduate of Royal College of Dental Surgeons.

[54]*Re Davidson and Royal College of Dental Surgeons* (1925) 57 O.L.R. 222.

[55]The case. *Re Chrichten,* 13 O.L.R. 275. which held that the standards of the ordinary reasonable man must be applied, was distinguished on the grounds that it dealt with infamous or disgraceful conduct in a professional respect rather than with "improper conduct", as was the issue here.

[56]The Court may have given some weight also to the evidence that lectures in dental ethics were given during the dental course and that in these lectures such advertising was stated to be unethical.

[57]Minutes of RCDS, 1929.

cooperate, then a Discipline Committee hearing was held. In 1933 one member was suspended,[58] and in 1934 for the first time a member was expelled as a result of advertising.[59]

Education

The main problem facing the Board at this period was the school. Relations between the teachers and students were strained,[60] the school was overcrowded,[61] and the arrangement with the university was not satisfactory. In 1913 and 1919 talks were held with the university but no major changes were made. The Board was more successful in its negotiations with the government. In 1920 it was agreed that the government would provide the College with an annual educational grant. In return, however, the Minister of Education was made an ex officio member of the Board, and his specific consent was necessary for the disposal of any of the College's property.[62]

The dental course itself continued to place greater emphasis on academic education and less on practical experience. In 1915 it was decided that there would be no compulsory period of indenture. Students, after their first year, might spend their summer vacations working in a dentist's office under an articling agreement; but such an agreement could endure only for one summer and could not be renewed without the consent of the Board.[63]

In 1921 the university began to offer a "predental" year, and in 1922 the Board made it a compulsory part of the curriculum.[64] In the same year the Board decided to accept the university's examinations as qualification for licence.[65]

The talks with the university continued, and by 1925 an agreement was reached whereby the College school would be taken over completely by the university. The Faculty of Dentistry would continue to elect one member to the Board of Directors, and it would have four representatives on the University

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[58]Minutes of RCDS, 1933.

[59]Minutes of RCDS, 1934.

[60]For example, in 1911 the Dean complained of the students' actions in refusing to return to classes for a week after the official end of the Christmas vacation, and then refusing to perform any more laboratory work.

[61]This overcrowding was not much relieved by the enlargement of the building after 1920. This was due partly to the increased enrolment after the war, and partly to the increasing number of applications received from outside the province. In 1921, it was decided to limit each class to 160 students; 100 from Ontario, and sixty from outside Ontario. Minutes of RCDS, May 1921.

[62]S.O. 1920, c. 46.

[63]Even this privilege was withdrawn in 1952.

[64]Moreover, the College required that those educated outside the province have taken a five-year course, whether they applied to write the RCDS examinations or sought to register by virtue of a Dominion Dental College diploma.

[65]Minutes of RCDS, 1922.

Senate. Graduates of the dental faculty would elect two further senators. Thus the management of dental education passed from the hands of the Board of Directors; and although it still had the power to prescribe the curriculum, the university took the initiative in this field also. As in the College of Physicians and Surgeons, the Board concentrated on prescribing licensing requirements for dentists educated outside Ontario.

Legislation

In 1926 the Dentistry Act was once again re-enacted, but no startling changes were introduced.[66] The government of the College was somewhat simplified by the authorization of an Executive Committee to act in the intervals between Board meetings. Previously it had been the practice to call special meetings whenever an important question arose.[67] The maximum annual fee was increased to ten dollars, and it was provided that the licence of a dentist in default should lapse until he had paid the arrears, plus a penalty of not more than ten dollars. The sections dealing with education were amended to provide for the amalgamation with the University of Toronto. The main change was that the Board could accept as the prerequisite for licensing, in place of its own examinations, those of any university that it deemed of equal standing. It was also made an offence for anyone except the College or a university to operate a dental school or to offer instruction in any branch of dentistry.

A few minor changes in the disciplining procedure were made. If both parties agreed, hearings could be held in Toronto. Where costs were assessed against a member, they could be collected under a writ of execution, and such costs were to be assessed on the Supreme Court scale.

One new provision that would benefit the profession was the installation of a six-month limitation period on actions for negligence or malpractice.

The Act was again amended in 1931.[68] It provided that the Minister of Health should become an ex officio member of the Board, but the main provisions were concerned with discipline and offences. In 1930 three cases had been referred to the Discipline Committee where dentists had charged exorbitant fees.[69] Although no action was taken at the time, a provision was inserted into the 1931 Act that "infamous, disgraceful, or improper conduct in a professional respect" included fraudulent and exorbitant charging of fees.

The most significant change in the Act concerned the nature of offences under it. In giving the healing professions control over practitioners, the Legislature

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[66]S.O. 1926, c. 46.
[67]For example, in 1924 three meetings were held in four months.
[68]S.O. 1931, c. 40.
[69]Minutes of RCDS, 1930. During the same year the Discipline Committee also investigated two dentists who were alleged to be cutting their fees. They were advised to raise their prices.

had always been concerned to protect the Good Samaritan and the friend or neighbour who gave aid in time of sickness from prosecution as an unauthorized practitioner. This end was accomplished by inserting a clause that, to be illegal, an unlicensed practitioner must have acted for "hire, gain, or hope of reward". It was often very difficult to prove this element of the offence, and so the professions frequently sought to have it omitted. In this Act the dentists succeeded, probably because dentistry is not a field that is susceptible to friendly aid.

An even more startling concession was made in an Act in 1934.[70] It provided that where a person had dental equipment that would enable a person to practise dentistry on his business premises, such possession would be prima facie evidence that he was engaging in practice.[71]

1935-1967

Dental Auxiliaries

Dental Technicians

As in optometry, a large part of the dentist's practice consists of supplying mechanical aids to his patients. It was recognized early that it was more economical in terms of both time and money to have these aids manufactured by others according to specifications provided by the dentists. These manufacturers, or dental technicians, however, often felt that they were as competent as dentists to do the initial prescribing, and quite often conflict arose between the two groups. Sometimes there was cooperation, at least initially, between them; but usually they eventually disagreed. For example, in 1920 a dental technicians' organization, the Ontario Prosthetic Dental Association, intended to seek legislation governing technicians and asked the College to cooperate. The College set up a committee to confer with the technicians' groups; but this committee was disbanded the following year, since the technicians refused to accept its suggestions and all negotiations came to a standstill.[72] Although no formal relationship was continued between them, the Board of Directors continued to interest itself in technicians'

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[70]S.O. 1934, c. 9.

[71]The explanatory note attached to the Bill gave the reason for the clause:

> Section 3. Difficulty is experienced in preventing the practice of dentistry by unqualified persons because of inability to secure evidence as to their actual operations. It is proposed therefore to amend the Act as provided in this section so that the fact that an office is equipped in a general way with the equipment which a dental surgeon uses in the practice of his profession, will be prima facie evidence that the person charged is actually practising contrary to the Act.

[72]Minutes of RCDS, 1920 and 1921. The dentists felt that the group should be ruled by a Board of Governors of three dentists and three technicians, and that membership should be granted on the applicant's meeting certain educational standards through a course given by the College and through practical training under indenture.

activities. In 1928 the Discipline Committee recommended that the College keep a list of their laboratories, and it was also decided that a dentist who allowed a technician to work on a patient should be suspended or expelled.[73]

In 1939, at the request of the technicians, it was decided that the President of the Board or Chairman of the Discipline Committee should act with the technicians' association to attempt to resolve disputes arising between dentists and technicians.[74] In spite of this effort, relations between the two groups rapidly deteriorated. In 1941 in his report the Secretary of the Board stated:

> During the year the position of the technician in relation to the dentist has been a subject of more than passing interest. The technician is gradually and quietly taking over a part of the practice of dentistry in this province. The Board should be fully cognizant of this fact and study should be given to the matter.[75]

The College paid some attention to this warning, and the next year an Act was passed which in effect defined the scope of the permissible activities of dental technicians.[76]

The new Act first defined dentistry or dental surgery to include diagnosis and treatment of any condition or injury to tooth or jaw; advising on, or making, any dental appliance such as a bridge; and making an impression or cast from which such a dental appliance might be manufactured. Then the Act revised the sections setting out the offences that might be committed against the Act. It remained an offence for a person not a member of the College to practise, or hold himself out as entitled to practise, dentistry or to use any name or description that would imply that he was qualified to practise. In addition prohibitions were included against providing any service that was part of the practice of dentistry, and against making or repairing any dental appliance. These additions, together with the definition of dentistry, would effectively prevent any technician from pursuing his occupation. Where a dentist supplied a written prescription, together with any necessary cast, to a technician, however, an exception to the Act made it lawful for the latter to make the required appliance. If an action were brought, the onus was on the technician to prove that he was acting under a prescription and that any cast was made by a member of the College. The 1934 prohibition

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[73]Minutes of RCDS, 1928. In fact, two dentists were brought before the Discipline Committee in 1926 on such a charge, but no action was taken against them since they undertook not to repeat the offence.

[74]Minutes of RCDS, 1934.

[75]Minutes of RCDS, 1941.

[76]S.O. 1942, c. 8. According to a newspaper report on the measure, the amendments were requested by both the College and the dental technicians. *Globe and Mail*, Toronto, February 16, 1942.

against having dental equipment in an office was altered to permit such equipment where the Board of Directors had given permission. This would allow the Board, in effect, to approve dental laboratories.[77]

Although the technicians had acquiesced in this legislation, they continued to seek legislation on their own behalf. In 1945 the President of the College announced that a mutually acceptable organization had been set up, and in 1946 the Dental Technicians Act was passed.[78]

Dental Hygienists

Dentists employed auxiliaries within their offices also. As early as 1919 they had sponsored a course to train dental nurses, so that dentists might have competent help in carrying on their practice.[79] By the time the war broke out, however, it was clear that dentists were performing many routine procedures that could be done just as efficiently by a less highly trained person. The need for such auxiliaries became plainer as the shortage of dentists was increased by the demands of the war. On the other hand, as the President pointed out in his address in 1944, traditionally the dentists had performed all the services within the mouth, while auxiliaries were limited to activities outside the mouth. In spite of the reluctance to break with this tradition, by 1947 the Executive Committee recommended that a course be instituted to train dental hygienists. The recommendation was accepted, and an Act was passed which allowed the Board to make regulations providing for the establishment and control of a group to be known as dental hygienists.[80] The Act provided that such persons could be allowed to clean and polish teeth, to give instruction in oral hygiene, and, if the College wished, to perform other minor dental functions.[81]

Opposition within the profession to such auxiliaries remained strong, however, and the program was delayed for various reasons.[82] Thus it was not until April 19, 1951 that regulations to govern hygienists' powers and training were put into force. The training course was started in the fall of that year at the University of Toronto, and by 1957 its graduates were generally accepted throughout the profession.

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[77]The ability to guard against unauthorized persons having dental equipment was further enlarged by another provision in the Act. The issue of a search warrant was allowed in any case where an agent of the College was willing to swear that he had reason to believe that there was dental equipment on the premises to be searched.

[78]S.O. 1946, c. 18.

[79]Minutes of RCDS, 1919. The course was given originally by the Faculty of Dentistry at the University of Toronto. It continues today at Ryerson Polytechnical Institute, but only a few girls are trained each year.

[80]S.O. 1947, c. 27.

[81]The penalty section was amended to provide that a dental hygienist could act under the supervision and control of a dentist without infringing the Act.

[82]For example, in 1950 it was decided that the College could not afford to institute such a course.

Refugee Dentists

As had happened to practitioners in all the other healing professions, to dentists the war first meant problems of allocating manpower[83] and eventually led to the problem of how to deal with immigrants who wished to practise dentistry. At the outbreak of the war the College was most concerned, however, with the loyalty of its members and students. At the 1940 meeting the faculty registrar suggested that all applicants for admission to the College be required to swear an oath of allegiance.[84] The motion was not passed, but the next year the regulations were altered to provide that applicants for licence be Canadian citizens.[85] This requirement remained in force until 1947, when it became necessary only to demonstrate the intention of becoming a citizen.[86]

It was not until 1949 that the Board faced the problem of refugee dentists who wished to be able to practise in Ontario. After interviewing several such men, it was decided that before they could reach the Ontario standard, they needed two years of training — the first year to include those subjects in which their training had been deficient, and the regular final year. Although the faculty was very crowded,[87] in 1950 arrangements were made for a few to attend this special course.[88] The results were unsatisfactory, however, and in 1952 it was decided that after passing a qualifying examination, European dentists would have to take the last three years of the course.[89]

Discipline

The Discipline Committee continued to be concerned with how dentists advertised their practice. In 1939 it was decided that although radio broadcasts were a means of educating the public, dentists could speak only on programs that were sponsored by a dental society, and both the speaker and his material had to be

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[83]By 1942 the Secretary was reporting that there was a shortage of civilian dentists, and that these men were unevenly distributed. Minutes of RCDS, May 1942.

In 1943 the College recommended that the number of students admitted to the faculty not be increased in view of the overcrowding of the profession that would result with the demobilization of dentists at the end of the war.

[84]Minutes of RCDS, May 1940.

[85]By-law 11, 1941.

[86]By-law 8, 1947. The reason for amending it was the change of the Citizenship Act, which required six years' residence before a person could attain citizenship. It is perhaps one indication of the influences of the Cold War that no consideration has been given to abandoning the requirement which originally was imposed as a war measure.

[87]In 1949 concern was expressed that the school's reputation might suffer, since only students from Ontario were being admitted. The course had been reduced to five years on the outbreak of the war; and probably because of the great number of applicants, it has not been raised again.

[88]Minutes of RCDS, May 1950.

[89]Minutes of RCDS, May 1952. There was also a provision that where a student proved able, he should pass from the third into the fifth year. By 1957 only six of fifty-four admitted to the course had done so. Minutes of RCDS, May 1957.

approved by the Board.[90] In addition, the Committee began to take an interest in how a dental practice was conducted. For example, industrial clinics could not be held without the approval of the Board.[91] In 1954 a dentist was refused permission to incorporate on the grounds that it would be against the by-laws.[92] Similarly, a partnership between a dentist and his wife, if she were a dental hygienist, was held to be unacceptable.[93]

The Committee also worried about the dentist's relations with his patients.[94] But except for acting in specific cases, there was not much that could be done to improve matters[95] but to try to ensure that the practitioner kept his office in a proper condition and carried on his practice with a fair degree of competence. In 1942 a by-law was passed which provided that each dentist's office should be inspected periodically.[96] Both the state of the office and the competence of the practitioner were to be examined. The inspector could recommend improvements to the dentist, and if he did not comply, he would be reported to the Committee.

The Committee also recommended procedures that they thought would improve dentist-patient relationships. For example, in one case it was suggested to the dentist involved that he completely reassess his office procedure and take a course in public speaking.[97]

In 1966 the disciplinary provisions of the Act were amended. It was stated specifically that professional misconduct included incompetence, and the discipline procedure was reformed to correspond with that followed by the College of Physicians and Surgeons.

In addition, one unique power was given to the Discipline Committee. It could impose fines up to $1,000 on erring dentists. This provision, naturally enough, met some opposition in the Legislature on the grounds that it gave a professional College the power to impose a penalty that would not affect the service given

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[90]Minutes of RCDS, May 1939.

[91]Minutes of RCDS, May 1937.

[92]This was presumably By-law 11, 1945, which prohibited a dentist from practising for the benefit of anyone who was not a member of the College.

[93]Minutes of RCDS, May 1959. Curiously enough, in the same year it was decided that there could be no objection to a dentist's being hired by a physician.

[94]In 1944 the Committee expressed its growing concern in the following report:

> An alarmingly increased number of complaints have been received from patients complaining of unsatisfactory service, exorbitant fees, and lack of professional courtesy in dealing with patients. Although fully cognizant of the strain under which men are practising today, your committee takes a serious view of such unprofessional conduct and recommends to the Board that thought be given to ways and means of correcting these unethical practices which are bringing discredit to the profession.

[95]Local dental societies were encouraged to set up mediation committees to deal with individual cases. Minutes of RCDS, May 1959.

[96]By-law 12, 1942, s. 6.

[97]Minutes of RCDS, 1961.

to the public. The Minister of Health did not attempt to defend the power to fine on its merits, but rather said that the College had asked for this authority merely as an extension of their present power of fining.[98]

Dental Technicians

Although dental technicians for some time had had a voluntary organization, the Ontario Prosthetic Dental Association, and had even attempted to promote governing legislation in the early 1920's, it was not until the war made the value of their services apparent that much heed was given to their aspirations. When they sought legislation in 1946, the Royal College of Dental Surgeons lent them support, but not until it had scrutinized the proposed Act very carefully.[99] Eventually, however, agreement between the two bodies was reached and the Bill was passed through the Legislature with a minimum of debate.[100] The Act provided that dental technicians were to be governed by a governing board of dental technicians, consisting of five members appointed by the Lieutenant Governor in Council. The term of office was to be two years.

Those technicians in practice on March 31, 1946 were entitled to registration on paying the requisite fee. In all other cases, the Board had power to make regulations governing the admission of dental technicians to practise in Ontario, prescribing their qualifications, and setting up and maintaining a register of qualified persons. The Board had the power also to prescribe an annual registration fee of not more than twenty-five dollars.

In addition, the Board could make regulations for the discipline of the registrants. Thus it could adopt a code of ethics and define misconduct; it could also call for an investigation of any complaint that a technician had been guilty of misconduct or incompetence, and for the imposition of the penalties of cancellation or suspension. All these regulations, however, were to be subject to the approval of not only the Lieutenant Governor in Council, but also the Royal College of Dental Surgeons. There appears to be no case where the College has objected to any of the regulations.

The major part of the Act was devoted first to defining the technicians' privileges, and then to providing the cases in which other persons might exercise the

[98]Hansard, June 23, 1966. Although the Minister claimed that the College already had power to fine, none appears in the prior Acts except the power to charge a $10 fee on reissuing a licence to a member who had been expelled for failure to pay his annual fee.

[99]The dentists objected to the technicians' original provisions regarding the composition of the Board and its powers, the professional titles of the technicians, and the definition of a technician.

[100]S.O. 1946, c. 18.

same functions. A dental technician was defined as a person who:

> . . . upon the prescription or orders of legally qualified dentists or physicians, makes, produces, reproduces, constructs, furnishes, supplies, alters, or repairs any prosthetic denture, bridge, or appliance or thing used in, upon, or in connection with any tooth, jaw, or associated structure or tissue, or in the treatment of any condition thereof.[101]

Registration as a dental technician served as a licence to practise, and also carried the right to use the designation "registered dental technician" and to describe the business as a "dental laboratory".

The Act specified a number of exceptions, when unregistered persons could acts as dental technicians. These included dentists, physicians, and the employees of a hospital, university or municipal clinic working on the basis of a proper prescription. Employees of a registered dental technician also were included. A dentist, or a solo or partnership practice, could hire an unregistered technician, but a number of dentists with separate practices could not.[102]

The Act took account of the commercial nature of the technicians' business by allowing them to incorporate. Any incorporated laboratory, however, had to be controlled by a registered technician, who would be deemed guilty of infringements committed in the laboratory.

The original regulations under the Act[103] provided for the registration of those who served as technicians in the armed forces, if application were made within eighteen months of discharge. Otherwise the candidate must have completed a four-year apprenticeship program under the guidance of either a dentist or a dental technician. The program included annual examinations administered by a board consisting of two technicians and one dentist.

The regulations also set out a code of ethics which dealt mainly with permissible advertising.[104] Violation of the code constituted misconduct. The Board would investigate such misconduct on receipt of a written complaint. Notice would be

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[101]It should be noted that the requirement that a technician work according to prescription brings this definition within the exception of those defined as practising dentistry under the Dental Act. That is, provided that a technician worked by prescription, he would not be prosecuted for illegal practice of dentistry.

[102]These people would not be violating the Dentistry Act if they were working under a prescription. In 1960-1961 employment of non-registered technicians by dentists was limited to the case where not more than three practised together in the same suite of offices.

[103]C.R.O. 1950, c. 34.

[104]The only advertising that was acceptable was by mail to the dental profession or in a professional journal. Even then, the advertisements could not include claims of consultations, free services, premiums or rebates. In fact, a technician's terms or prices could be revealed only on request by a person entitled to use his services.

Further, a technician could make no claim as to the speediness of his service.

The only positive duty imposed by the code was that he must use the methods and materials specified in the prescription.

given of the hearing, and the offender was entitled to appear with counsel. As well as cancelling or suspending the offender, the Board could impose conditions on his registration.

Although these regulations provided for an annual fee, it was not until 1952 that any provision was made concerning default.[105] It was provided that where a person was in default, his name would be struck off the Register and he would be required to pay a five-dollar fee on applying for reinstatement. Reinstatement would occur only if the period of default had been less than five years.

The Act was first amended in 1960-1961.[106] Most of the amendments were concerned with housekeeping. For example, the Board was enlarged to include the immediate past chairman ex officio, and the limit of twenty-five dollars on registration fees was removed. The Act also increased the fines for offences as specified and provided that they be paid to the Board. The Board could assess the costs of his hearing against an offender.

The main object of the amended Act was to clarify the conditions under which a corporation might operate a dental laboratory. The majority of directors and shareholders had to be registered technicians, and a registered person had to be in charge of the laboratory's operation at all times. Both this man and the directors would be deemed responsible for any contravention of the Act by the corporation.

The Act was amended again in 1962-1963.[107] It was then provided that the Board should be a corporation with the power to hold and dispose of land. The other amendment in the Act provided that the Board might pass regulations providing for registration examinations and the appointment of a Board of Examiners. In the same year regulations were passed providing that the applicant must pass the Board's examinations after articling for a minimum of four years.[108] The same regulations provided that after 1967 any applicant must have Ontario Grade 12 education or its equivalent.

Dental Hygienists

Regulations were published in 1951, setting up the rules governing dental hygienists.[109] The group was clearly stated to be a subordinate body, and most of the administrative duties concerning it were carried out by a Registrar-Secretary appointed by the Dental Board.

Certain functions could be delegated to a hygienist. Included were cleaning

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[105]O. Reg. 332/52.
[106]S. O. 1960-61, c. 17.
[107]S. O. 1962-63, c. 31.
[108]O. Reg. 283/63.
[109]O. Reg. 72/51.

and polishing teeth under the supervision of a dental surgeon, giving instruction in oral hygiene, taking dental x-rays, and applying topical medication for control of decay.

The regulations were unique in that they required that all applicants for registration must be girls. They must have graduated from Grade 13 and attended a two-year course at the University of Toronto.[110] Once these conditions were met, the candidate could write the examinations set by the Board; and, if she obtained pass standing, she was entitled to be registered. Registration was to be renewed annually on payment of a fee. A certificate of registration was to be issued and displayed by the hygienist at her place of employment. In addition, after 1954 those who wished to be registered must be Canadian or British citizens, or show proof of intention to become such a citizen.

Aside from displaying her certificate, a dental hygienist could not advertise that she was registered. Registration could be suspended or revoked by the Board if in a hearing it found that a hygienist had been guilty of incompetence or improper conduct, had been convicted of a crime affecting fitness to practise, or had disobeyed the regulations.

A new regulation was introduced in 1965[111] that slightly changed the type of work a dental hygienist was allowed to perform[112] and allowed registration without undergoing the Board's examinations, provided that the applicant had passed the examinations of an approved school (still only the University of Toronto). The greatest change in the regulations, however, was a provision that only registered persons might act as dental hygienists.

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[110]This course was the only one approved by O. Reg. 99/51.
[111]O. Reg. 332/65.
[112]This regulation allowed hygienists to assist dentists in working within the mouth.

Chapter 4 Pharmacy

The First Pharmacy Act

The considerations governing the incorporation of pharmacists were somewhat different from those obtaining for doctors and dentists who were seeking to form Colleges during the same period. Since these latter groups actually diagnosed the ailments of their patients and performed healing operations on their bodies, there was a clear public interest in ensuring that they had a minimum knowledge of their profession. The function of the druggist, however, was mainly that of a merchant selling at a profit the drugs prescribed by a physician. There was bound to be opposition to granting a class of retailers a monopoly in the sale of certain commodities. On the other hand, many prescriptions required the pharmacist to compound the drug described; and if he had not the requisite knowledge and skill to perform this task, the patient likely would suffer ill effects. It was to prevent this possibility that, from the days of the early settlements, doctors made sporadic attempts to regulate who would practise pharmacy.

As a further consideration, many of the products sold by the druggists were highly poisonous. Therefore, the government felt that in the interests of the public their sale should be controlled. Various Acts detailing the conditions under which poisons might be sold were passed by both the federal and the provincial governments.

Thus Pharmacy Acts have dealt with two questions: the qualifications necessary for a pharmacist to enter practice, and the conditions under which he might sell certain drugs. In both these areas consideration must be given to the commercial nature of the profession, and so certain controls have been established over the operation of drug stores.

The first attempt at exercising control over the practice of pharmacy in Upper Canada was contained in the Medical Act of 1795.[1] It provided that no person could sell or distribute drugs by retail without a licence from the Medical Board. This clause was as hard to enforce as that requiring that physicians be licensed, and it was repealed in 1806.[2] Unlike the doctors, by the new Medical Act of 1815, druggists were not required to be licensed.

As the medical profession gained strength in the province, it became more and more reluctant to entrust the compounding of its prescriptions to any

[1](1795) 35 Geo. III, c. 1 (Upper Canada).
[2](1806) 46 Geo. III, c. 2 (Upper Canada).

untrained person who cared to call himself a pharmacist. Therefore legislation was sought that would establish some sort of a standard.[3] The first such Bill, "A Bill to regulate the sale of medicine and drugs and the education of young practitioners", was introduced in 1829.[4] This Bill was not proceeded with. A measure was introduced in 1831, which would require anyone desiring to set up an apothecary to obtain a licence from the Medical Board,[5] but it too failed to be passed. At last, these efforts met success in 1839, when the Bill that incorporated the first College of Physicians and Surgeons of Upper Canada also provided that the College could make regulations for the government of those acting as apothecaries.[6] A fine of up to two pounds was established for infringement of these rules. The rules of the Act were short-lived, however, since it was disallowed in 1841. After this setback, the medical profession ceased to take an interest in legislation governing pharmacy until the time of Confederation.

While physicians were concerned mainly that their patients be given unadulterated drugs of the correct dosage, the government was concerned to prevent the sale of poisons for illicit purposes. In 1859 an Act was passed, governing the conditions of their sale.[7] The Act provided that:

> No apothecary, vendor of medicines or other party in this Province shall sell . . . (various poisons) . . . to any person who does not then produce and deliver a certificate or note from some person duly licensed to practise medicine or some Priest or Minister of religion resident in the locality, addressed to such person and mentioning the name, residence, calling or profession of the person requiring the poison and stating the purpose for which it is required . . . .

With the passing of the Medical Act of 1866, the doctors once again turned their attention to imposing some sort of control over the practice of pharmacy. By this time, however, the pharmacists were sufficiently organized to resist attempts at outside control, and the Canadian Pharmaceutical Society was formed to seek legislation on its own behalf.[8] The first attempts of this organization were directed

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[3]Many doctors undoubtedly solved the problem by dispensing their own medicines, a practice which later led to some conflict between the two professions.

[4]Journal of the Assembly of Upper Canada, p. 41.

[5]Journal of the Assembly of Upper Canada, p. 46.

[6](1839) 2 Vic., c. 38, s. 18 (Upper Canada). The section also recited the reasons for subjecting pharmacists to the control of the College, as follows: "Whereas, for the protection of the public, it is necessary that some supervision and control should be had over persons vending Medicines and Drugs or otherwise acting as apothecaries in any City or Town Corporate . . . ."

[7](1859) Consolidated Statutes of Canada, c. 98. This Act was originally passed in 1849 (12 Vic., c. 60). At that time, however, it stated that it did not apply to Upper Canada. This proviso was repealed in the Consolidation.

The original purpose of the Act was to prevent trappers from obtaining poison for use in hunting animals, and it was probably felt that this practice was not an evil in the more sparsely populated Upper Canada.

[8]*Canadian Pharmaceutical Journal,* Vol. I, 1868, p. 8.

towards federal legislation. An M.P., Mr. Harden, was found to sponsor a Bill in the federal House, but a Bill to regulate the Sale of Poisons had already been introduced, as a part of the criminal law.[9] This Bill was later withdrawn, but no encouragement was given to the pharmacists to suppose their Bill would be better received.

It was then decided to tackle the matter in the various provincial Legislatures, and early in 1869 a Bill to "regulate the sale of Poisons and respecting Chemists, Druggists and Apothecaries"[10] was introduced in the Ontario Legislature. This measure would have incorporated the Pharmaceutical Society of Ontario to govern the affairs of pharmacists throughout the province. The Society was to be governed by a thirteen-man Council elected by its members. The membership was to consist of those entered on the Society's Register. Those in practice on their own account, or in partnership when the measure was passed, were entitled to registration on payment of a fee; but subsequently registration was dependent upon passing an examination[11] prescribed[12] and administered by the Council. Once registered, the pharmacist would be entitled to receive a certificate of registration, which he must keep displayed at his place of business. Finally there was a status of "associate" in the Society which was open to apprentices, assistants and clerks, but did not confer any privileges on them.

Registration was to serve as a licence and entitled the pharmacist to dispense doctors' prescriptions, including any wine, aperitif or cordial that may have been prescribed. The Bill incorporated the Poisons Act, which was already in effect in Ontario. This had the effect of prohibiting anyone who was not licensed as a pharmacist from keeping a shop that sold certain poisons, a limitation that was, of course, not contained in the original Act. Substances deemed to be poisons were set out in schedules to the Bill; and these schedules could be added to if a resolution by the Council was approved by the Lieutenant Governor in Council. Any poison sold either retail or wholesale had to be marked with both its name and the word "Poison". When these substances were sold at retail, the name and address of the seller also were to be marked on the container. Poisons included in schedule A could be sold only to persons introduced by someone known to the druggist, and the particulars[13] of the sale had to be entered in the "poison book".

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[9] 1 Journal of the House of Commons of Canada, 1867-1868.

[10] (1869) Second Session of the First Parliament of the Province of Ontario, Bill 135.

[11] Anyone who wished to sit for these examinations was required to give notice of this desire to the Registrar one month before the examinations were held. He also had to pay a fee.

[12] These regulations were, of course, subject to the approval of the Lieutenant Governor in Council. The Council could also make regulations concerning fees, and had the usual power to make by-laws governing procedure, the appointment of examiners, and the payment of expenses of its members.

[13] These particulars included the date of sale, the name and address of the purchaser, the name and quantity of the article sold, the reason for which it was stated to be purchased, and the name of the person introducing the buyer. The purchaser then was to sign the entry.

The Bill provided for a penalty if any of its provisions were breached. In a prosecution under the measure, the burden was on the defendant to prove his registration, but a certificate under the hand of the Registrar and the seal of the Society was accepted as prima facie evidence. Persons who sold any article in violation of the Bill were not entitled to recover the price of the items in any court. In addition, if the Council felt that any member, because of conviction under the measure, was unfit to be registered, it could send a resolution to this effect to the Lieutenant Governor in Council, who might then order that the name of the offender be erased from the Register.

Finally the Bill provided that it did not prevent anyone licensed under the Medical Act from supplying medicines to their patients, or wholesalers from supplying poisons in the ordinary course of their business. It also recognized the commercial nature of the profession by providing that the executors of a deceased pharmacist could continue his business as long as a registered pharmacist was in charge.

This Bill, however, never received second reading. It was not a government measure, and since it was presented so late in the Session, it was lost in the press of more important business. It was introduced again at the next Session[14] and after it had passed second reading, was sent to a Select Committee. This was the first time that the Bill was debated in the House. Its sponsor, Dr. McGill, explained the motives behind the presentation as follows:

> The necessity for such a Bill had been felt for a long time, as well by the community at large as the druggists themselves. This necessity had been felt in consequence of the number of uneducated men throughout our country who had entered into the druggist business. They assumed (he meant the word in its fullest sense) that important business without education or experience to fit them for it and serious blunders and fatal mistakes were of frequent and alarming occurrence. Instances of fatal mistake from ignorance on the part of druggists were on the increase, notwithstanding the fact that they were increasing in general intelligence and education. The public felt that it was high time to put a stop to these frequent mistakes, and this measure was now introduced for that purpose. The amount of injury was greater than was at all supposed by the public, for many a constitution had been ruined by overdoses of powerful medicines given by ignorant druggists who undertook to prescribe for ailments about which they knew nothing. The respectable, educated chemists felt that they required protection from such men. They required that men should be educated and serve an apprenticeship before setting up as druggists themselves. They should be required to come up to a reasonable standard, and be submitted to a fair examination. This was all the druggists required, and it would be only fair to grant them this protection. The Bill before the House was calculated to give that protection.[15]

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[14](1869) Third Session of the First Parliament of the Province of Ontario, Bill 11.
[15]*Globe*, Toronto, November 25, 1869.

Although many of the members agreed with the principle of controlling who should sell drugs, most were reluctant to give the druggists a monopoly.[16] Nevertheless, the Bill was sent to the Select Committee for further study. This Committee made several changes. The name was changed from the Pharmaceutical Society of Ontario to the Ontario College of Pharmacy; the grandfather clause was enlarged to include those who at the time of the Act had served as an apprentice for three years and as a druggist's assistant for one year. In addition, registration was made dependent on payment of an annual fee.[17] The original Bill empowered the College to make regulations prescribing the fees for associates; the amendment provided for regulations to govern the admission of assistants and apprentices as associates of the College. Finally, several new offences concerning the sale of drugs were named. All drugs were to be compounded in accordance with the British Pharmocopoeia or any other standard set by the CPSO. It became an offence to sell any article under the pretence that it was some other drug, or to sell any patent medicine unless it were licensed for sale by the Registrar of the Ontario College of Pharmacy. Where damaged or adulterated medicine was being sold, the label had to state the fact of damage or adulteration. The privilege of selling drugs was extended to the employees of a registered pharmacist, in spite of the objection that it was these men who often caused the errors. Once again, however, the Bill had to await the consideration of more important government measures and did not receive its third reading.[18]

The Bill was presented once again in its amended form at the next Session.[19] It met a great deal of opposition, on the grounds that it was creating a "close corporation". This time, however, the government supported the Bill, and it was eventually passed,[20] although without several of the amendments added the previous year. These were the clauses regarding patent medicines and adulterated products. It was felt that limiting the sale of patent medicines to registered pharmacists would be an unwarranted interference with trade and particularly would deprive country storekeepers of a large part of their revenue.

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[16]Several men objected to the Bill on the grounds that it dealt with trade and commerce, and was not within the scope of the provincial powers of legislation. Mr. Blake felt that the problem lay not so much with the pharmacists, but with the inexperienced clerks who were allowed to fill prescriptions.

[17]All members were to be required to pay an annual fee by May, if they wished to be included in the Register which was to be published annually in June. A man who was in default in paying his fees was not entitled to any of the privileges of a member of the College.

[18]The Editors of the *Pharmaceutical Journal* of Great Britain felt that the Bill was shelved because of opposition from free traders. *Pharmaceutical Journal,* Vol. 3, 1870, p. 10.

[19](1870-71) Fourth Session of the First Parliament of the Province of Ontario, Bill 20.

[20]S.O. 1871, c. 34. In spite of this support, the Bill was almost defeated in the Committee of the Whole. At this Committee's first sitting on June 26, 1871, section 4 which created the College was defeated. Over the objections that this defeat nullified the Bill, the rest of the measure was considered. It was reported to the House on February 2, 1871, but instead of the report being adopted, a vote returned the measure to the Committee, directing it to include section 4.

The other provision that was left out of the Act was the one, found in the original Bill, that would allow the druggist to dispense spirits on a doctor's prescription. The Committee of the Whole objected to it both on the economic grounds that it might interfere with provincial revenues and on the moral grounds that it would provide outlets where liquor might be sold on Sundays.

The College, 1871-1911

As soon as the Act was passed, the Canadian Pharmaceutical Association — the voluntary organization which had piloted the Bill through the Legislature — prepared to disband in favour of the Council set up by the new Act. This body faced many problems over the first thirty years of its existence. Probably the most important was advancing the educational qualifications of pharmacists. At the time the first Act was passed, all pharmaceutical training was by apprenticeship, but the Council first arranged for an outside course of lectures and ultimately established its own school.

Most of the other problems arose from the commercial aspect of pharmacy. The greatest difficulty concerned the position of the partner whose interest in a drug store was financial only. Later this problem was further complicated by corporate ownership of pharmacies. Another important issue was how to maintain control over the manufacture and sale of patent medicines. Finally, the Council was faced with the problem common to all licensing bodies at the beginning of their existence, unauthorized practice. In this case it was complicated by both the various exemptions which allowed doctors to dispense and the need to determine what authority could properly be delegated to clerks.

1871-1884: Attempts at Improvement

The Council held its first meeting in April 1871. This meeting was concerned primarily with organization, but some substantive matters were dealt with. A form for the poison book was adopted,[21] and it was decided that a pharmacist could obtain a duplicate certificate for a branch, if he could show that it was to be managed by a competent person.[22]

In addition the first policy statement was made on the question of partnerships. It was felt that the Act required both partners in a pharmacy to be registered. At the next meeting, however, it was pointed out that the situation had changed: all those who had acted as partners before the Act was passed would be allowed

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[21]Although the transfer of powers from the Canadian Pharmaceutical Association was in the main an orderly one, dispute arose. At its preliminary meeting the College adopted the British form of poison book. Although the Association had books printed in this form, it passed a resolution at its June meeting declaring that it was the body authorized by the Act to decide the form of these books. It is difficult to see what it hoped to accomplish by this resolution, since the society was disbanded at its next meeting.

[22]The Act required that the pharmacist display his certificate at his place of business.

to register, whereas those who wished to register now must pass an examination. Thus, if a young pharmacist wished to acquire a partner to provide financial support, he would be limited to finding one who was a pharmacist. The Council therefore amended its partnership requirements to provide that only one partner must be registered, and that his associates be allowed to carry on business as partners, on paying an annual fee, but to be denied any of the privileges of membership in the College.[23] At the next meeting, it was decided that this plan contravened the Act, and it was abandoned.[24]

At the same time it was decided that the Act gave the Council no power to set the period that candidates for examination must spend as apprentices. Earlier they had set this period at three and one-half years. Although the Act made no reference to education by means other than apprenticeship, the Council decided that it was not exceeding its powers by making inquiries of the Technological College regarding courses for pharmaceutical students.

The greatest problem faced by the College at this time was dealing with the large number of merchants who were infringing the Act. Although methods of enforcing the Act were discussed at the first meeting of the Council, no definite action was taken to this end, aside from deciding that each member should do his utmost to enforce the Act in the area where he practised. In 1872 circulars were sent to leading druggists throughout the province, asking them to report any infringements.[25] Under this system a great many complaints were received, but the Council felt that the only action that should be taken was to caution the transgressors.[26] An Infringement Committee was set up, however, to prosecute the most persistent offenders. Not surprisingly, this system was not very effective, and in 1876 a prosecutor was appointed.[27]

One problem that must be faced by every licensing body is that of dealing with practitioners from outside its jurisdiction. Although most licensing organizations are forced to come to some reciprocal arrangement as a result of some circumstance they cannot control, the College of Pharmacy voluntarily faced the problem quite early in its history. At the August meeting of 1872 the Council decided that it would be desirable to recognize the diplomas of some similar bodies which would in turn recognize the Ontario graduate. Although there was no provision in the Act for such arrangements, a resolution was passed recognizing

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[23]Minutes of OCP, July 1871.

[24]Minutes of OCP, December 1871.

[25]Minutes of OCP, February 7, 1872.

[26]A suggestion that a prosecutor be appointed to proceed against such offenders was rejected on the grounds that it would lead to bad public relations.

In addition to the problem of unregistered pharmacists, in 1872 it was announced that many of those who had registered would not pay the annual fee. In 1873 the Registrar was authorized to proceed against such delinquents.

[27]This man was the same Mr. Smith who acted as prosecutor for both the doctors and dentists.

the holders of licences from Great Britain, Quebec and Philadelphia, provided that the holder had been in business for four years before coming to Ontario.

It soon became clear to the Council that the Act was deficient in many respects, and in 1874 an amending Bill was presented to the Legislature.[28] First, the measure set out educational qualifications. Prospective apprentices would have to pass a preliminary examination and prove that they were entitled to enter an Ontario high school. The apprenticeship period was set at three years ending with the "Minor Examination". At this point the student would become registered as an associate of the College and would be entitled to dispense prescriptions. Once an associate had served two years he might try the "Major Examination", which would entitle him to full registration so that he might operate his own business.

The Bill also attempted to establish tighter control over dispensing prescriptions. The original Act gave this privilege to the registered pharmacist or his employers, whereas under the new legislation, dispensing would be restricted to pharmacists and registered associates. In addition, the privilege given to doctors of operating pharmacies would be withdrawn, although they would continue to dispense in the course of their practice.

Like the early attempts at legislation, however, this Bill was buried in a Special Committee while the House dealt with other legislation.

Strangely enough, the Bill did not raise several issues that were occupying the minds of Council members at this time. One of these was the creation of electoral divisions in the province to ensure a more representative Council. Although doubts were expressed as to the Council's power to inaugurate such a scheme, in 1875 the recommendations for Council were made on a territorial basis.[29] Moreover, the Bill made no provision for a partner who held only a financial interest in the pharmacy; but this omission resulted simply from the solicitor's opinion that the problem could be solved by passing a by-law.[30]

Nevertheless, when the Council presented its next Bill in 1877,[31] a provision was inserted allowing a pharmacist to take in a "silent partner" whose only interest in the business would be financial.[32] This Bill, however, was withdrawn in favour of an amended Bill to be presented at the next Session.

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[28](1874) Third Session of the Second Parliament of the Province of Ontario, Bill 65.

[29]Minutes of OCP, February 1875

[30]Minutes of OCP, August 1874.

[31](1877) Second Session of the Third Parliament of the Province of Ontario, Bill 100.

[32]In other respects the Bill was much like that presented in 1874. There was no provision for a preliminary examination, and the term of apprenticeship was extended to four years. It was made an offence for a druggist to employ anyone but a registered associate as his assistant.

In the hopes of overcoming the opposition of the doctors, the Bill provided that medical men could operate pharmacies, provided that they were registered under the Pharmacy Act. As they were entitled to register without examination, the only gain to the College would be the payment of the annual registration fee.

The Bill presented in 1878[33] dealt only with the internal organization of the profession and was calculated to offend no one. It contained no provisions concerning doctor-operated pharmacies, silent partners, or restrictions on employees who might dispense prescriptions. Although it retained the reciprocity provisions, it dealt mainly with the training system. The associate concept was banished, and after serving a four-year term an apprentice was entitled to registration as a pharmaceutical chemist if he passed the examination.[34] In spite of the Bill's innocuous nature, many members of the Legislature objected to it as creating a "close corporation" and restraint on trade.[35] It was sent to the Committee, but that body so altered its provisions that the Council withdrew the measure.[36]

At this time the need for further legislation was becoming more and more apparent. Although the Council had passed a by-law concerning the desirability of reciprocity when a British graduate applied for admission, the Council reluctantly decided that it had no power to admit him.[37] The lack of control over education was keenly felt. In 1878 it was decided that where examination candidates could not show that they had served as apprentices for three and one-half years, they would not pass unless they received two-thirds of the possible marks on each examination.[38] The Council had set up a ten-week course of lectures at the School of Practical Science,[39] but it had no means of compelling apprentices to attend. As time went on, the Council became more and more convinced that some sort of academic course should be part of an apprentice training; and in 1881 a special committee was formed to determine the best method of setting up a school.[40] The Committee recommended that a school be established along the same lines as that run by the Pharmaceutical Society in Great Britain, and the necessary arrangements were set in train to do this.[41]

In spite of the appointment of a prosecutor, the Council continued to receive many complaints concerning violations of the Act. In 1878 another Infringement Committee was set up to deal with these cases.[42] This Committee had power to direct investigations where it felt the situation warranted it. The Committee was successful enough that the following year it became a standing committee of

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[33](1878) Third Session of the Third Parliament of the Province of Ontario, Bill 66.

[34]Apprentices were required to have high school entrance qualifications and to enter into a standard contract, which had to be registered with the College. The rest of the Bill merely detailed the annual fees and increased the fines for offences.

[35]*Globe*, Toronto, February 4, 1878.

[36]Minutes of OCP, February 1878.

[37]Minutes of OCP, February 1877.

[38]Minutes of OCP, February 1878.

[39]Minutes of OCP, August 1877.

[40]Minutes of OCP, August 1881.

[41]Minutes of OCP, February 1882.

[42]Minutes of OCP, August 1878.

Council;[43] and in 1880 it was decided that the direction of either the Committee or one of its members to the detective to prosecute was sufficient authority to enable him to collect his expenses from the College Treasurer.[44]

Although at this point the College was more concerned with implementing the Act than with the behaviour of College members, one question of ethics that aroused its concern was that of splitting fees with doctors who sent them patients. This had been a problem before the Act was passed,[45] and some druggists continued to behave in the old manner. Indeed, even within the Council, there was a split in opinion as to its propriety. In 1879 a motion condemning the practice was passed unanimously, but not before several members had spoken in its defence. They felt that if they did not give the doctor a percentage, he would dispense his own medicines with considerably less accuracy than a qualified pharmacist.[46]

1884-1912

The first amending Act was passed in 1884.[47] Few of the College's proposals were included, however, and the most noteworthy aspect of the measure was that it divided the Act into two parts — one dealing with the College, and the other with the sale of drugs. This form has been continued to the present. The Act did make some educational provisions, but they were rigid and could not be altered by the Council. Pharmacy students must have qualified for high school entrance and must apprentice for three years. The intermediate status of associate was abolished,[48] and a one-year limit was established for those who wished to register under the grandfather clause.[49] The College was authorized to make reciprocal arrangements with certain other jurisdictions and to admit honorary members.

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[43]Minutes of OCP, February 1879.

[44]Minutes of OCP, February 1880.

[45]S. W. Jackson, *The First Pharmacy Act of Ontario,* Toronto, 1967, pp. 13-14.
One of the justifications used by the physicians was that they were directing their patients towards druggists they knew were competent, rather than allowing them to be taken advantage of by the pharmaceutical quacks which abounded at that time.

[46]Minutes of OCP, August 1879.
The resolution carried read as follows:
> That in the opinion of this Council, the practice which exists of a physician obtaining from druggists as a bonus or percentage, a part of their profits on the sale of medicines ordered on prescription is improper and injurious to the trade and tends to destroy the good feeling which should exist between the medical profession and the druggist, it is hereby directed that a copy of this resolution be transmitted to the C.P.S.O. requesting their co-operation in taking such steps as will lessen or altogether put a stop to the evil complained of.

There is no record of any steps being taken in the matter, however.

[47]S.O. 1884, c. 22.

[48]Although this meant that all graduate apprentices would be registered as pharmaceutical chemists, only those who were carrying on business as such were liable for the annual fee.

[49]Another Act was passed in 1891, which provided that those who had been in practice before 1871 could register under the grandfather clause within the next year.

Although there was no provision for partnerships, the right of a druggist to operate more than one establishment was implicitly recognized in the requirement that he pay a separate annual fee for each store.[50] On the other hand, no change was made in the provision which allowed the druggist's employees to fill prescriptions, and a section was added which provided that a doctor might operate a pharmacy without being registered under the Act.

For the most part the Council had managed its affairs amicably, but with the election of 1887 a split developed between the older members of the College and those who had qualified since it came into existence. One of the younger men challenged the election held that year,[51] claiming that there should be more younger men on the Council and that no Council member should sit on the Examining Board. There were also accusations of gerrymandering in setting the boundaries of the electoral district. The Court seemed to agree that "new blood was needed"[52] but declared the election void because of certain irregularities in the appointment of the scrutineers.

This case resulted in the passing of an Act[53] that dealt with many of the problems facing the Council. First, it provided that the Council might by by-law divide the province into thirteen electoral districts, the boundaries of which might be changed at ten-year intervals.[54] Council members could be elected only from among those pharmaceutical chemists who carried on business on their own account.

The Act also made several desired changes concerning the education of pharmacists. The most important of these was to make attendance at the College school compulsory for two courses of lectures in a stated curriculum. It also increased the matriculation standard and lengthened the apprenticeship period to four years. The latter changes had been recommended by a special committee set up in 1888.[55]

Finally, the new Act made some amendments regarding those who were allowed to handle drugs. Although they were not required to write examinations,

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[50]With regard to registration, the new Act also required any druggest who was retiring to give notice to the Registrar of that fact; otherwise he would be liable for his annual fee. Such a man could resume business on giving notice to the Registrar.

[51]*Pearson v. Love* (not reported).

[52]There were also accusations of tampering with the ballots to the extent of actually changing votes. The situation was certainly unsatisfactory, for in his judgement Robertson, J., said:

> I certainly approve in the highest way possible of the conduct of the plaintiff and those associated with him in bringing about an exposure of some of the operations of the parties connected with this College. It was becoming almost, if one might use the expression, an oligarchy. Two or three people seemed to be running the whole concern.

[53]S.O. 1887, c. 25.

[54]Further safeguards against gerrymandering were provided, in that the Lieutenant Governor in Council had to approve both the original by-law and any changes in the electoral boundaries.

[55]Minutes of OCP, February 1888.

doctors registered under the Medical Act who wished to open a pharmacy were required to register with the College of Pharmacy and to obey its regulations. In addition, although the Council could not bring itself to recommend that only pharmacists should dispense drugs, it was provided that where a druggist must show that he was registered, he must show also that no employee who dispensed drugs had any financial interest in the shop.

Once again, the means of enforcing the Act had assumed paramount importance in Council discussions. That the number of unauthorized practitioners had increased in recent years was largely due to certain actions of the Council itself. In 1886 it had been decided to cut back on the enforcement of the Act and spend some of that money on the new school building.[56] Enforcement became even more lax as a result of the internal dissention within the College brought out by the 1887 election. Finally, the administrative control of prosecution was split between the Registrar and the Infringement Committee.[57] Further difficulties were encountered by the persistent refusal of several unsympathetic magistrates to convict offenders.[58] Several members of the Council believed that the detective system was at fault,[59] but the Infringement Committee felt that this system was the only effective one. It recommended, however, that the detective be made a salaried official who would systematically cover the province, rather than one who prosecuted offenders on his own initiative in return for a part of the fine.[60] In accordance with this view, an inspector was appointed in August of 1897 and sent out on regularly scheduled trips. This system seemed to be successful,[61] and by 1905 it was decided that the inspector need act only on a part-time basis.

No sooner had the dissention within the Council been dealt with than a dispute arose between the school and the Council. Although it was based partly on the teachers' feelings that their salaries were inadequate, the immediate cause of the uproar was the accusation by a Council member that the Dean was giving one professor too much work.[62] The subsequent recriminations led to the Dean's dismissal, and the situation was aggravated further by the appointment of a new Dean and several American professors. A large proportion of the staff and students[63] opposed this move. The situation eventually was resolved by the retirement of the newly appointed Dean and the appointment of a third, although not before the whole affair had brought much adverse publicity to the College.[64]

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[56]Minutes of OCP, 1886.
[57]Minutes of OCP, February 1889.
[58]Minutes of OCP, February 1890.
[59]Minutes of OCP, February 1888.
[60]Minutes of OCP, August 1890, February 1891.
[61]By 1900 he had investigated ninety-five cases which had been settled satisfactorily.
[62]*Canadian Pharmaceutical Journal,* Vol. 26, 1891, p. 153.
[63]At a special meeting held early in 1891 to discuss the matter, about seventy students gathered in the corridors of the building where the meeting was held to express their dissatisfaction and to boo the Council President. (*Ibid.*)
[64]Minutes of OCP, August 1891.

The resolution of the issue left the College free to concentrate on negotiating the terms by which it would become affiliated with the University of Toronto. Although a Committee had been set up in 1887[65] to confer with the university on this matter, the next year the feeling was that it would be better for the College to retain control of its own affairs.[66] Thus it was not until 1891 that the College definitely decided to affiliate, and that year a committee was empowered to enter into negotiations with the Senate. It was agreed that the College and the university would set the curriculum; the College would continue its teaching and licensing functions; and the University would confer the degree of Bachelor of Pharmacy upon the College graduates.[67]

The next effort of the College was to revise both the matriculation standard[68] and the content of the course to the point where a Phm.B. would be recognized as matriculating its holder into the Faculty of Medicine. This scheme was first proposed to the University Senate in 1894, but was refused on the grounds that the general education of the College students was not equal to that of other matriculants.[69] The College recognized the justice of this decision and made no further requests of this nature. The matter continued to be discussed, however, and in 1900 the Council succeeded in having an Act passed that raised the matriculation standard to that required for university entrance in certain named subjects.[70] The Dean of the College was less successful in arranging for extension of the course, for although he continually pointed out to the Council the advantages of increasing the course to occupy two academic years, by 1903[71] no action had yet been taken on the suggestion.

Pharmacists were faced by many problems that sprang from the commercial nature of their enterprise. During this period the task of enforcing the Act was made more difficult by the fact that many of the offenders took refuge behind the corporate veil.[72] In the proposed Act of 1893 the College had attempted to provide that no corporation could operate a pharmacy unless all the directors and shareholders were registered under the Act.[73] Although there were several

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[65]Minutes of OCP, August 1887.

[66]Minutes of OCP, February 1888.

[67]Minutes of OCP, February 1892.

[68]In 1893 a Bill was introduced into the Legislature which, had it been passed, would have required the pharmaceutical student to matriculate with the same standard imposed upon the medical student. The Bill would also have given the Council control over the discipline of students. The College finally gained this latter power by the Act of 1905.

[69]Minutes of OCP, February 1894.

[70]S.O. 1900, c. 21.

[71]Minutes of OCP, February 1896, February 1897, February 1898. By 1899, the Education Committee was also in favour of a two-year course and recommended it in its reports in February 1899, February 1902, and February 1905.

[72]Minutes of OCP, February 1897.

[73]It should be noted that this proposal represents a complete reversal of the College's earlier position that there should be some means available to the young pharmacist to secure financial aid in his business from a non-registered person.

subsequent attempts to have similar legislation presented to the House, it was not until 1906 that any legislative controls were placed on incorporated pharmacies.[74] This Act provided that no incorporated company could keep a pharmacy unless the majority of its directors were registered pharmacists and one of these directors personally managed the business. Furthermore, all the registered directors were liable for any offence committed by the company.

Although these provisions were not precisely those desired by the College, their passage represented a signal victory for the profession. As it was originally presented, the Bill provided that all directors of such a company be registered pharmacists, and that each must take out the annual certificate which would allow him to carry on business. Although there was a great deal of opposition to the measure in the House, it passed its second reading and was sent to a Select Committee. The By-laws and Legislation Committee gave the following account of its progress through this stage:

> . . . it was indicated by some of the Government that there should be some modifications in its wording, and after due consideration, the bill was slightly modified, providing that a majority instead of all the directors should be qualified pharmacists; but in providing for this modification, the provisions of the bill were further extended in a very important feature, viz. by incorporating the principle of personal qualification, control and management of shops owned by incorporated companies.[75]

The Bill as amended by the Select Committee provided also that the registered directors would be liable for any offences committed by the company and prohibited the company from adopting as part of its corporate name the name of any person who was not a registered pharmacist. Even this amended measure met with further opposition in the Committee of the Whole.[76] Several members felt that as long as a pharmacist managed the business, there was no need for even a majority of the directors to be registered.[77] Although no change was made concerning the directors, the clause concerning restrictions on the corporate name was dropped when it was objected that it would embarrass many companies doing business under the name of their deceased founder.

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[74]S. O. 1906, c. 25.

[75]*Globe,* Toronto, April 18, 1906.

[76]*Globe,* Toronto, April 23, 1906.

[77]Mr. Ross was reported as expressing the following view:

> The measure was in the nature of a restriction upon trade and commerce and upon legitimate business. So long as the persons who were dispensing the drugs were qualified druggists, he could not see why it should be necessary to enact that a majority of directors of a joint stock company selling drugs must be duly registered chemists or druggists. This might quite easily prevent men, not qualified druggists, and seeking legitimate sources of investment, from putting their money into such concerns.

Ibid.

Patent Medicines

The Pharmacy Act governed not only the professional College but also the sale of poisons. Until the 1890's it was generally assumed that the latter term did not include patent medicines. Although the pharmacists felt that it was dangerous to allow the indiscriminate sale of these medicines, it had been made clear in the earliest debates on the Act that the Legislature would not countenance any measure that would deprive the general storekeeper of his right to sell them. This feeling on the part of legislators was affirmed in 1893. In that year the College had prepared legislation that would control the sale of patent medicines,[78] but withdrew the measure when it was discovered that British decisions on their similar Pharmacy Act held that patent medicines were within the scope of "sale of poisons".[79] With the situation thus brought to its attention the Legislature immediately enacted a measure saying that nothing in the Pharmacy Act should be deemed to interfere with the role of patent medicines until July 1, 1894.[80] This was a temporary measure passed to enable the Legislature to reach some more satisfactory solution; but as none had been found by 1894, another Act was passed extending the protection given to the sale of such medicines for one more year.[81] During this period, the College had been pressing its scheme for analysis, and by 1895 it had convinced the government of its usefulness.[82] In that year an Act was passed[83] that gave the provincial Board of Health the power to analyze any patent medicine where there was "reason to apprehend that any such medicine contains any poison mentioned in the schedules to the said Act that renders its use in the doses recommended dangerous to life or health". If the medicine were found to contain a sufficient dosage of poison, its manufacturer would be allowed to make representations to the Board on his own

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[78](1893) Third Session of the Seventh Legislature of the Province of Ontario, Bill 100. The measure provided that on the petition of the College or any doctor, the Board of Health should analyze the patent medicine named; if it was found to contain any of the scheduled poisons, it would then come under the provision of the Act.

[79]*Globe*, Toronto, March 9, 1894.

[80]S.O. 1893, c. 28.

[81]The year's limitation was due to representations of the College. The original Bill had made the protection permanent. S.O. 1894, c. 45.

[82]This was a complete reversal of the attitude of a year earlier. In that debate the *Globe* had reported the Hon. Mr. Ross, who presented the 1895 Bill, as saying:

> This matter had been very fully discussed last year before a special Committee. A good deal of evidence had been taken of the instance of the pharmacists to show that evil resulted from the sale of these medicines by general dealers but it was not shown that the results of the practice had been very serious. It had been suggested that all such medicines should be examined by the Board of Health and if found to contain any considerable quantity of poison should be labelled "poison". Pharmacists generally wanted the sale of medicine kept in their own hands, but it was felt, on the other hand, that it would be a great hardship in the back districts that such drugs should not be obtainable except from a pharmacist whose place of business in some cases would be very far away.

Globe, Toronto, March 9, 1894.

[83]S.O. 1895, c. 29.

behalf. The Board would then present a report to the Lieutenant Governor in Council; and if this report were approved, the remedy would come within the Pharmacy Act after due notice had been given in the *Ontario Gazette*.

Although this measure effectively protected the public from outright poisoning, the pharmacists still felt that the sale of even non-poisonous patent medicines constituted a harm to the health of the public. This feeling was expressed as follows in the preamble of a Bill presented in 1900:[84]

> Whereas it is necessary and expedient to protect the public against the fraudulent or improper advertisement of drugs, medicines or cures and against the sale of such of the same as contain hurtful ingredients and to licence the advertisement or sale of patent or proprietary medicines . . . .

This measure provided for a licensing scheme that would control the advertisement and sale of patent medicines. The owner of the formula of the medicine would have to be licensed before he could sell his remedy. His licence would be renewed annually and would be granted only if investigation showed that the medicine were not "harmful or noxious in the hands of a person ignorant of its composition". The measure also contained restrictions on advertising, which, if breached, would lead to the cancellation of the licence. After its presentation, however, this Bill received no further notice from the Legislature.

In 1906 another Bill was presented, this time aimed at informing the public of the nature of patent remedies.[85] The measure would have forced the proprietor to state the formula of the medicine on its container and to mark it poison if it contained certain named ingredients. Like its predecessor, this Bill was overlooked by the House. This was the last attempt on the part of the College to promote legislation in Ontario to control patent medicines. In 1907 the Dominion Parliament passed the Patent and Proprietary Medicines Act which the Council felt adequately covered the matter.[86]

The provisions of the Act of 1895 remained in effect in Ontario, however, and its provisions continued to cause a great deal of resentment. These feelings culminated in a Bill presented in 1909,[87] which would have deprived the College of its share of the fines collected as the result of offences committed against the Act. Mr. Bowyer explained the purpose of his Bill as follows:

> The operation of the Act in its present form is nothing short of an outrage! Since the 1905 amendment[88] no one outside of a qualified druggist was

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[84](1900) Third Session of the Ninth Legislature of the Province of Ontario, Bill 254.

[85](1906) Second Session of the Eleventh Legislature of the Province of Ontario, Bill 160.

[86]S.C. 1908, c. 56. Indeed the Council felt that if anything, the federal government had been too zealous. In its congratulatory resolution it went on to say: "It is however, the sense of this body that the bill compiled for this purpose is unnecessarily burdensome to the Retail Druggist who is trained, educated, qualified, and licensed to safeguard the public against the harmful effect of noxious drugs and medicines."

[87]S.O. 1909, c. 64.

[88]The 1905 Act had added a number of compounds such as borax and alum which were in common household use to the list of scheduled poisons.

> permitted to sell the simplest household remedies. Under it and because of the fact that the College of Pharmacy got one-half of all fines, storekeepers and respectable country merchants had been subjected to the most vexatious of prosecutions. These people were good citizens, he claimed, and had made the sales to prevent country residents having to drive miles to a drugstore . . . . I feel strongly that a serious injustice has been done. There was no attempt to notify the country merchants of the changes in the act under which the prosecutions were made. However, I hope it is a case of the best way to have a bad law repealed being to enforce it.[89]

The government admitted that there was some hardship and allowed the parts of the Bill that removed certain compounds from the poison schedules to pass, although the section dealing with the division of fines was deleted.

It was not until 1924 that the provisions respecting patent medicines were removed from the Ontario Act. The amendment provided that the Pharmacy Act should not interfere with the sale or production of patent or proprietary medicines, and that such medicines would be those coming within the definition thereof in the Dominion Act.[90]

1911-1952

Until the end of the war, the Council generally was content to maintain the status quo.[91] Its major interest was in education and a number of reforms were introduced, although most of them were at first hotly resisted. The only other area in which advances were made was discipline. With the coming of the Second World War, however, the Council began to take an interest in pharmacists educated outside the province.[92] It also awoke to the fact that the College of Pharmacy lagged behind the other professional bodies, both in its internal structure and in its powers over its members, and began to press for a completely new Act.

1911-1945

The Pharmacy Act was re-enacted in 1911,[93] but only two important changes were made. The first of these provided that only pharmacists or their apprentices

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[89]*Globe*, Toronto, March 3, 1909.

[90]S.O. 1924. c. 43.

[91]A few men did not share the general feeling of satisfaction. One of these, Stewart, expressed his feelings towards certain aspects of pharmacy in presidential addresses in 1911. He felt that the great bulk of druggists were "indifferent, careless, helpless and hopeless", and he attributed this condition to the harshly competitive conditions existing in the trade. These conditions were due, he felt, to the cut-rate practices indulged in by many, and to the participation by physicians in the druggists' field of competence. Minutes of OCP, 1912.

[92]Although the pharmacists were the first to recognize the desirability of reciprocal relationships, they were the slowest to enter into actual arrangements. Apparently the first formal agreement was made with Alberta in 1914, and even this was abandoned in 1918. (Minutes of OCP, November 1914, November 1918.) There was, however, a verbal agreement concerning reciprocity with the Prairie provinces. Otherwise, graduates from outside Ontario seem to have been admitted to the College according to their individual qualifications.

[93]S.O. 1911, c. 40.

could compound prescriptions. This section was passed without comment by either the Legislature or the College, but it represented an objective for which the Council had been aiming for some time.

The Act also gave the College authority to carry on a school for the instruction of student pharmacists and to prescribe the curriculum taught therein.[94] This was the first official recognition of the School of Pharmacy, although its existence had been sanctioned implicitly in 1889 when the Act was amended to provide that apprentices must attend for two terms.

Perhaps it was the official recognition of the school that turned the Council's mind to thoughts of educational reform. In any event in 1912 a special committee was set up to study "the needs of this institution, revision of courses and the feasibility of introducing a two-year course with present building accommodations".[95] The Committee's report, however, was unfavourable to most changes. It stated that the profession felt that the emphasis should be on practical rather than academic training and was opposed to lengthening the course to two years.[96] A more constructive suggestion was made by the standing committee on education at the next meeting. The members suggested that a Bureau of Scientific Information and Research be established in connection with the school and be available to give aid to the pharmacist with problems arising in practice.[97] The suggestion was universally approved and was on the way to institution by the next meeting.

In spite of the unfavourable report of the special committee, the advocates of a two-year course continued to press for its institution. Although most of the pressure was exerted by the Dean and the faculty,[98] a group of Council members also was in favour of the plan.[99] The continual pressure exerted by these groups finally overcame the objections of the rest of the profession, and by 1926 it had been decided to institute a two-year course. Another special committee was set up to negotiate with the University of Toronto as to the courses it would teach.[100] An agreement was reached, and the course began in the fall of 1927.

One area in which the pharmacists lagged behind the other professional colleges was discipline. In 1917 the first small step towards participation in this area was made through new legislation.[101] Until this time the Council's only

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[94]The Act also continued the provision that apprentices must take courses in certain subjects; thus if the Council exercised its powers to regulate the curriculum, a conflict could have arisen.
[95]Minutes of OCP, June 1912.
[96]Minutes of OCP, November 1912. The Dean of the College replied that more practical instruction could be given only by sacrificing the value of the other courses.
[97]Minutes of OCP, November 1913.
[98]Minutes of OCP, November 1913, November 1918.
[99]Minutes of OCP, November 1918.
[100]Minutes of OCP, November 1926.
[101]S.O. 1917, c. 35.

power had been to recommend to the Lieutenant Governor in Council that he erase the name of a pharmacist who had been convicted of an offence against the Pharmacy Act. The new measure now gave the Council power to reinstate the offender after he had been struck off the Register for two years.[102] The Act also increased the fines that could be levied against those who infringed the Act. A concession was made to those who objected to the pharmacists' recovery of part of these fines, however, since the Act provided that the Lieutenant Governor in Council could require the College to refund its half share to the government.

Further disciplinary powers were granted to the Council by an Act passed in 1924.[103] The power of erasure was transferred from the Lieutenant Governor in Council to the College.[104] This power could be exercised where a pharmacist was convicted of an offence under the Opium or Narcotic Drug Act, the Ontario Temperance Act, or the Pharmacy Act, if the Council felt that the conviction rendered him unfit to practise. Where the offence was under the first Act the maximum period of erasure was two years; in the case of the latter two, it was one year. If the Council decreed a lesser period, the convicted pharmacist was not entitled to practise unless the Council reinstated him before the expiration of the maximum period. The Committee set up by the 1917 Act continued to have the power to act between Council sessions. In addition, the Council, or Committee, could suspend an apprentice from serving under his contract for periods up to a year, if he were convicted under any of these Acts.

Finally, the fines that could be recovered for offences under the Act were doubled, and the whole of the fine was made payable to the College.

Aside from the discipline provisions, this Act made few changes. The most important of these was to raise the matriculation standard for apprentices to university entrance or its equivalent.[105] A few sections were added to clarify the meaning of the 1911 Act. For example, all those who were liable to pay the annual fee[106] and had in fact paid it could vote in the Council elections, and it was provided specifically that each branch of a drug store must be managed by a registered pharmacist.

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[102]The Act also provided that a committee composed of the president and the chairman of the by-laws and legislation and the infringement comittees could refer a name to the Lieutenant Governor in Council for erasure, if it was felt the case was too urgent to stand over until the next Council meeting.

[103]S.O. 1924, c. 43.

[104]The Council was, of course, protected from any action brought on account of anything done in good faith under the section.

[105]The provision allowing for equivalent qualifications to university entrance was added to appease several members, who objected to such a stringent matriculation standard on the grounds that it might prevent men who were otherwise well qualified (a veterinarian was the example given) from entering the profession. *Globe*, Toronto, April 11, 1924.

[106]These were the proprietors and registered managers of retail drug stores.

Finally, the controls over corporate drug stores were tightened slightly by a requirement that the Registrar be furnished with the names and addresses of any corporation dealing in drugs or medicines.[107]

The College soon found that its new disciplinary powers involved considerable work. Before the June 1926 meeting, the Discipline Committee had suspended seven members. The Council decided to suspend all these men for various periods of time.[108] Like all the other Colleges, however, they were disposed to be lenient. The period of suspension would be reduced if the offender would give an undertaking not to commit any further breaches of the Act,[109] and by 1928 the Council was taking no further action against those who could give a satisfactory explanation for their conviction.[110]

Still, most of the Council's attention was given to education. Once the two-year course was instituted, it began to consider methods for the continuing education of practising pharmacists.[111] It was decided that the best method would be to issue a series of lectures by the professors of the school as circulars which would be sent to each College member; this scheme was instituted in 1930.[112] While these "postgraduate" lectures were being instituted, a correspondence course for apprentices was being debated.[113]

In 1929 a special committee appointed to consider the matter reported favourably on a correspondence course, combined with an examination at the end of each apprenticeship year.[114] Authority to institute the course was not given until 1934, however.[115]

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[107]In 1946 the further requirement was enacted that all drug stores be managed by a registered pharmacist rather than a director. S.O. 1946, c. 70.

[108]Although the Act made no provision for a hearing, all the offenders were invited to present their case to the Council.

[109]Minutes of OCP, June 1926.

[110]Minutes of OCP, June 1928. Other considerations appeared to govern the licensing at times. For example, in 1929 a man who was convicted of an offence under the Liquor Control Act was not erased, since he was the only druggist in a small northern town. Minutes of OCP, November 1929.

[111]Minutes of OCP, June 1929.

[112]Minutes of OCP, June 1930. In 1935 a resident course for practising pharmacists lasting a week was recommended. Although the Committee was told to proceed with the project, the records of the College do not show whether it was ever given. Minutes of OCP, November 1935.

[113]The Education Committee had first suggested such a course as early as 1909 (June Minutes), as a means of both preparing apprentices for the College course and improving their usefulness to their employers.

[114]Minutes of OCP, June 1929.

[115]Minutes of OCP, June 1934. Perhaps one of the reasons for this delay was the consideration given to including instruction for certified clerks (pharmaceutical assistants) in the course. The decision not to include training for such a group was based on the loss of academic prestige that would result to the College. Minutes of OCP, November 1930. This seems to be the first time that a class of technical assistants had been considered.

Meanwhile attention was being given also to the quality of the students and the course. In the case of students, it was argued, first by the Dean,[116] and later by the Education Committee,[117] that an increase in the entrance standards from junior to senior matriculation was necessary. In 1935 this change was put into effect. As the Depression continued, the discussion turned to the desirability of limiting the number of students in view of the overcrowded state of the profession.[118] Although no action was taken in this instance, a quota system for students was introduced at the end of the war, when the student body was swollen by the returning veterans. At first, preference was given to those with the longest service overseas or the longest apprenticeship record;[119] but by 1946 those places not occupied by veterans were distributed among the electoral districts on the basis of pharmaceutical population.[120]

Although in 1920 the College had operated one of the foremost pharmaceutical schools in North America, after that period, it sank into comparative obscurity as other schools in both the United States and Canada quickly extended their course from two to three and four years.[121] Although the Ontario school instituted a two-year course in 1927, it was prevented by the apathy of Council and by the Depression from regaining its reputation. That the profession as a whole recognized its decline in reputation is evidenced by the suggestion of the Ontario Retail Druggists Association that the school amalgamate with the University of Toronto.[122] The Council, of course, rejected this suggestion. Perhaps as a reaction, the Council began to place less emphasis on academic training; for in the next contract signed with the university for sharing the teaching of the course, the Phm.B. degree was no longer a prerequisite to writing licensing examinations.[123] On the other hand, more attention was being paid to the course. In the negotiations leading to the 1938 contract, a three-year course was suggested (it is not clear whether the suggestion was made by the College, the Faculty or the University). Although the College admitted its desirability, it was not instituted with that contract.[124] The Faculty was invited, however, to present the proposed course of study to the 1939 meeting,[125] and in 1940 it was given as an optional course.[126] The College was also negotiating with the university for a new degree, B.Sc.Ph., that would indicate a higher level of training.[127] The university was prepared to

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116 Minutes of OCP, November 1931, June 1932.
117 Minutes of OCP, June 1933.
118 Minutes of OCP, November 1937.
119 Minutes of OCP, November 1944.
120 Minutes of OCP, November 1946.
121 See account in Minutes of OCP, November 1944.
122 Minutes of OCP, November 1934.
123 Minutes of OCP, June 1931. Attendance was still compulsory.
124 Minutes of OCP, November 1937.
125 Minutes of OCP, November 1939.
126 Minutes of OCP, November 1940. Thirty students took the extra year at that time.
127 One reason for the delay in instituting the three-year course was that the university would not accept it as sufficient for this new degree. Minutes of OCP, November 1944.

accede to this request only if a four-year course was instituted.[128] The College, eager to improve its image, accepted the university's terms and the four-year course was to begin in 1948. This course was to be optional, however, and students would still be allowed to follow the two-year academic program leading to Phm.B.

As advances were made in the knowledge and use of drugs, changes were made in the Act to keep it contemporary. These changes consisted mainly in altering the various schedules. The problems raised by the introduction of codeine and the barbiturates, however, were so different that a new system was enacted to deal with them.[129] The drugs themselves were given a new schedule, D, which of course could be amended by the Lieutenant Governor in Council. Schedule D drugs could be dispensed only on the prescription of a doctor, dentist or veterinarian. Although no special record of sales was to be kept, the Minister of Health could require any druggist or practitioner to report the amount of such drugs that he had sold or prescribed; if the amount were deemed to be unreasonable or improper, the Minister could report the matter to the appropriate College for disciplinary action. The statute also authorized the College involved to discipline the offender as it would in cases of unprofessional conduct.[130] In 1939 this Act was amended to provide that the College involved would have the power to reprimand, or suspend or cancel the licence of, the offender after an inquiry. He, in turn, could appeal the College's decision to the Court of Appeal. A provision was added that required druggists to keep a record of the date, amount, and the name of purchaser and prescriber of all schedule D drugs sold.

1945-1952

The influx of refugees after the war included a number of druggists who wished to register with the College. Thus, as in related professions, the Council was forced to devise some means of evaluating the qualifications of men trained abroad. The first attempt at formulating regulations was made in 1947.

At this time it was declared that each application would be considered according to its individual merits, but some general rules were set out. Each applicant would have to have an adequate command of English and serve an apprenticeship equal in length to that observed by Ontario students. In addition the applicant might be required to write such examinations as the Council felt necessary to show his pharmaceutical skill. Finally, he must prove to the university that his academic

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[128]In this, it was supported by the Canadian Conference of Pharmaceutical Faculties, which recommended a four-year course commencing immediately upon the student leaving high school, with the apprenticeship to be served during and after the academic portion of the course.

[129]S.O. 1937, c. 56.

[130]It is difficult to estimate the power given to the College of Pharmacy by this section, since it had no power to discipline for professional misconduct. The Act was amended, however, before the problem arose.

training was equal to that obtained through the Ontario course.[131] In 1948 a six-month residence requirement was added to the above requirements, together with an entrance fee of $100.[132] A more realistic discussion of the problem took place the following year, when the question came up as to whether partially educated aliens should be allowed to enter the academic course. Although the Council expressed a great deal of sympathy for the plight of the refugees, they felt their first duty was to the Ontario residents who were already waiting to get into the overcrowded classes. The whole matter was left over to the next meeting,[133] when a new system for registering refugees was introduced. The applicant was to submit a duly certified history of his academic training, which would be given to the University of Toronto for analysis. If his academic training were adequate, the applicant would be allowed to serve an eighteen-month apprenticeship and then write an examination set by the Council. If he passed this examination, he would be entitled to registration.[134] It was decided at the next meeting that those applicants who needed only a few courses to meet Ontario standards would be allowed to attend these courses.[135] By 1950 of the forty-four applications received, twenty-nine had been allowed to register as apprentices.[136]

The main concern of the Council continued to be education. Even before the four-year course began its first year, it was decided to abandon the two-year course in 1952 and in the meantime to substitute a diploma for the Phm.B. degree.[137] In 1948 a Special Planning Committee recommended a complete merger of the school with the university. The members argued that as a university faculty, it would be eligible for research grants and that the students would benefit from a closer relationship with the other faculties. The Chairman also pointed out that since the school of dentistry had become a university faculty, better ethical conditions prevailed throughout that profession and it received greater public esteem. The Council was persuaded, and the Committee was given authority to negotiate with the university.[138]

Although the university was in favour of the scheme, a problem arose over the location of the new school. At that time the faculty building was on Gerrard Street, and the College felt it should be housed nearer the university to derive full benefit of amalgamation. On the other hand, neither the university nor the College

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[131]Minutes of OCP, November 1947. At the same meeting it was reported that the latest plan for establishing Dominion reciprocity had been abandoned because of objections from Quebec.

[132]Minutes of OCP, June 1948.

[133]Minutes of OCP, June 1949.

[134]Minutes of OCP, June 1949. At the same meeting the Registrar reported that he had been favourably impressed by the applicants from Central Europe, and that in most instances their training was superior to that given in Ontario.

[135]Minutes of OCP, November 1949.

[136]Minutes of OCP, November 1950.

[137]Minutes of OCP, November 1947.

[138]Minutes of OCP, November 1948.

could afford a new building. In 1949 the Board of Governors suggested that there be affiliation but that the rehousing of the faculty be postponed,[139] and discussion continued on this basis. An agreement finally was reached in 1952. The College was to transfer the faculty building to the university and make an annual payment of $50,000. The university would then assume all responsibilities connected with the building. The College was entitled to two representatives on the University Senate and the Dean of the Faculty was to become an ex officio member of the Council.[140]

In 1950 a new Act was passed to clarify the College's position with regard to education.[141] It was given the power to make regulations concerning apprenticeship periods and qualifications, the course of study, and the examinations to be passed by those who wished to be registered. In contemplation of the impending amalgamation, the College also could decide at which universities the prescribed course of study could be pursued.

In 1952 the regulations made under this section were published.[142] They stated that either the B.Sc.Ph. or the Phm.B. might be taken at the University of Toronto. If the former course were taken, the apprenticeship period would be eighteen months; if the student took the shorter course, he must complete a two-year apprenticeship before he commenced his course.

At the same time that it was endeavouring to improve the academic qualifications of pharmacists, the Council was considering the advisability of creating a class of assistants known as certified clerks. These men would be neither graduate pharmacists nor apprentices, but would have legal standing to act as assistants, after taking some of the regular pharmacists' training. In November 1948 the matter was referred to a special committee for further consideration.[143] This committee reported against the plan and suggested instead that people be allowed to register permanently as apprentices and thus obtain some standing. Although the scheme received some support, the majority objected to it on the grounds that it would prolong the evils of the apprenticeship system and would turn these men into a source of cheap labour.[144]

The war seemed to shock the profession from its somnolent state. The Council was forced to cope with returning veterans, a crisis in education, and an influx of refugee pharmacists. It also awoke to the realization of the deficiencies of the Pharmacy Act compared to the legislation governing the other health professions,

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[139]Minutes of OCP, June 1949.
[140]Minutes of OCP, June 1952.
[141]S.O. 1950, c. 52.
[142]O. Reg. 251/52.
[143]Minutes of OCP, November 1948.
[144]Minutes of OCP, June 1950.

and began to press for a complete revision of the Act. A draft Bill was approved in 1947;[145] but in spite of continual efforts by the College, by 1949 it still had not been presented to the Legislature.[146]

It was then decided that it might be better to change the Act by a series of amending Acts. The first of these was passed in 1951.[147] The major purpose of the Act was to prevent the handling of drugs by unqualified persons. The 1911 Act had limited the right to compound prescriptions to pharmacists and apprentices; the new Act limited the dispensing of such prescriptions to these persons also. Another section limited wholesalers to selling drugs only to those who were entitled to use or sell them.[148] The rest of the Act authorized the Council to cancel the licence of a pharmacist who had been declared to be mentally incompetent.

Another Act was passed the next year,[149] which dealt with the election of the Council. Until this time, the right to vote in elections had been limited to those who owned or managed a drug store. The new Act provided that all registered pharmacists could vote in the district where they were employed. At the same time all registrants became liable to pay an annual fee, which formerly had been imposed only on owners and managers; an additional fee continued to be levied against these groups.

1953-1967

The 1953 Act[150] and Amending Legislation

In spite of their success in having specific areas of the Act amended, the Council continued to press for a complete revision. When the revision was passed in 1953, the College acquired rights and duties roughly equal to those enjoyed by the other professional bodies.

Disciplinary powers were widely extended. For the first time, power was given to erase the registration of a member found guilty of negligence, incompetence or improper conduct in a professional respect.[151] Although it was not until 1965 that

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[145]Minutes of OCP, November 1947.

[146]Minutes of OCP, June 1949.

[147]S.O. 1951, c. 64.

[148]The Minister of Health gave the reasons for this provision:

> The third section has to do with the indiscriminate sale of drugs such as the barbiturates. In the past we find that the barbiturates have been handed out by stores other than pharmacies and we feel the indiscriminate sale of such drugs should be prohibited except by registered pharmacists. *Hansard,* March 30, 1951.

[149]S.O. 1952, c. 74.

[150]S.O. 1953, c. 79.

[151]Either the Discipline Committee or the Council could exercise this power. Previously the Discipline Committee could only recommend that the Council impose this penalty.

any procedure was specified,[152] the 1953 Act provided that any erasure had to be preceded by a hearing and also provided for an appeal to a Judge of the Supreme Court of Ontario.[153] A disciplined member could apply also to the Council for reinstatement.[154] In 1960 an amending Act was passed that allowed a disciplined member to be suspended where it was felt he did not deserve to be stricken from the Register.[155]

The 1953 Act also included evidentiary provisions similar to those in other professional Acts. Thus the Registrar's statement as to the status of a member would be accepted as prima facie evidence of that status, without the necessity of proving either the Registrar's signature on the statement or that the person signing actually was the Registrar.[156] A six-month limitation period was imposed on actions against pharmacists for professional negligence. Finally the Act provided that the owner or manager of a pharmacy should be liable for any offence committed against the Act by any of his employees, if he had expressly or implicitly permitted the act.

The Act also made some new provisions concerning drugs. For the first time the word itself was defined. In 1953 the word included any substance named in the latest edition of several pharmaceutical codes. In 1957 the definition was altered to make it clear that the substance need be mentioned in only one of these codes,[157] and was further enlarged to include "any substance that is offered

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[152]S.O. 1965, c. 97. This Act set out procedures for disciplinary hearings that would ensure that they were held with the same formality that prevailed among the other professions. All testimony was to be given on oath; all witnesses were subject to cross-examination; and subpoenas could be obtained and enforced by both parties. The Council was entitled to assess the costs of the hearing against a member who had been found guilty of improper conduct.

This Act also provided that a member could be struck off the Register for non-payment of fees. Reinstatement would follow on payment of a ten-dollar fee, plus the annual fee for that year.

[153]In 1966 the Act was amended to provide that appeals were to be made to the Court of Appeal within one month of the College's judgement. S.O. 1966, c. 115.

[154]In 1962 an amendment was passed which provided that where a member was reinstated, he would have to pay a fee plus the arrears of his annual fees for a period up to five years. S.O. 1961-62, c. 103.

[155]S.O. 1960, c. 82.

[156]The 1960 amendment provided that any document supplied to or kept by the Registrar pursuant to the Act was admissible as prima facie evidence, if it were certified by the Registrar under the College seal without proof of either the Registrar's signature or the Seal. The same Act made a report on the analysis of a drug made by a Dominion or Provincial analyst admissible without proof of the appointment or signature of the analyst.

[157]Premier Frost explained the government's reasons for introducing the Bill: ". . . at the present time I think there are eight pharmacopoeia and the way it acts is that it requires an order to obtain a prosecution — the prosecution would have to show that the drug was listed in each of the eight pharmacopoeia and that adds too great a burden on the prosecution . . . ." Debates of the Legislature of Ontario, March 28, 1957.

for sale or sold for the prevention or treatment of any ailment, disease or physical disorder".[158] In 1962 the definition was again enlarged to include vitamin preparations of a certain potency.[159]

A new schedule B of drugs was added to the Act. Known as the "free list", it named the more innocuous preparations that could be sold by anyone.[160]

A new system of marking prescriptions was inaugurated. Each prescription was to be given a number which would also be marked on the container in which the prescribed substance was contained. The original prescription was then to be filed by the pharmacist, although the patient was entitled to a copy on demand.

Finally those who dispensed drugs in hospitals were exempted from the Act. In 1964 a category of membership of hospital pharmacists was added to the College. These men, who were all registered pharmacists, were given the right to elect one member to the Council.[161]

Although the main purpose of the Act was to put the College of Pharmacy in a position parallel with the other major healing professions, the Act also contained a number of provisions that dealt with the business side of pharmaceutical practice. For the first time an official record of pharmacies was to be kept by the Registrar. Anyone who was going to open a new pharmacy or buy an existing one was to inform the Registrar of his name, residence, the address of the pharmacy, and the date he proposed to commence the new operation. Each owner was required to notify the Registrar of the name of the manager, other registered pharmacists and apprentices in his employ before January 10. He also had to inform the Registrar within five days of any change in personnel.

The College succeeded in obtaining new rules to govern corporations that owned pharmacies. In any new company the majority of shareholders, as well as directors, would have to be pharmacists, although existing companies could continue in the old way. In addition, each company had to notify the Registrar of the names and addresses of the directors and shareholders, and the number of shares held by each; also it must give the same information within five days of a request to do so.[162]

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[158]Patent Medicines were excepted from this definition, however, by the next section.

[159]S.O. 1961-62, c. 103. This amendment also specified the editions of the various pharmacopoeia that were to be used in defining drugs.

[160]Schedule B included such drugs as aspirin, castor oil and codeine, and such poisons as hydrogen peroxide and turpentine.

[161]S.O. 1963-64, c. 89.

[162]The draft bill prepared by the College also contained a clause that provided that where a pharmacy was conducted under a fictitious or trade name, the name of the actual proprietors should also appear with it. The provision was deleted, however, because of objections to it raised by the Ontario Retail Druggists Association. Minutes of CPA, November 1952.

The Act further clarified the duties of a pharmacist in regard to the pharmacy. No pharmacy was to be kept open unless it was under the personal supervision and control of a registered pharmaceutical chemist. In 1959, however, it was held that this section did not require the continual personal presence of the supervising pharmacist.[163]

Education

Once the responsibility for academic education had been transferred to a large extent to the university, the Council turned its attention to improving apprenticeship experience. In 1954 the Council of Pharmaceutical Faculties recommended that apprentices should be registered with the College, and that standards should be set as to the type of pharmacy a student should be allowed to train in.[164] A new system of registration was immediately set up, whereby the apprentice was registered with both the College and the Faculty in anticipation of the time when the bodies would occupy separate premises.[165] But when it was attempted to set the minimum number of prescriptions dispensed by a training pharmacy, the resolution was defeated.[166]

In 1959 new regulations were issued which radically changed the terms of apprenticeship.[167] First the period was reduced to eighteen months, twelve of which must be served consecutively. A student could serve his apprenticeship either before or after his academic training, but any time served concurrently with his course would not be included. In spite of the Council's failure to set minimum standards for training in 1956, the regulations provided that the Council could terminate an apprenticeship contract if it felt that the pharmacy was not providing an adequate training. Finally a preceptor was not allowed to indenture more than one apprentice at a time. In 1963 the College finally imposed standards on training pharmacies. An apprentice might train only in a pharmacy that dispensed at least 2,000 prescriptions annually. At the same time the training period was reduced from eighteen to twelve months, six months to be served consecutively.[168]

In 1964 an Act was passed which further changed the system.[169] An apprentice who had received his degree could apply for registration as an interne. The advantage of such registration was that as an interne, he was allowed to compound and dispense prescription drugs without supervision.

Control of Pharmacies

After the 1953 Act was passed, however, the Council's main concern was to

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[163] *Re Regina v. Comrie* [1959] O.W.N. 198.
[164] Minutes of OCP, June 1954.
[165] Minutes of OCP, November 1954.
[166] Minutes of OCP, June 1956.
[167] O. Reg. 191/59.
[168] O. Reg. 234/63.
[169] S.O. 1963-64, c. 89. In 1966 regulations were issued which allowed an apprentice to apply for registration as an interne after he had completed six months of his articles and received his degree. (O. Reg. 787/66.)

increase the "professionalism" of pharmacists. Strangely enough, this involved them in closer control over the commercial aspects of pharmacy, especially in their efforts to promote "ethical" methods of pricing and advertising. In 1957 a Code of Ethics was adopted and the Discipline Committee announced that it would take action against those who did not comply with it.[170] In the same year the Council made its first recommendation as to a proper pricing method,[171] although it was reported the next year that not all pharmacists would accept it.[172] In addition, the Council made recommendations which it felt would give drug stores a more professional reputation. For example, it was suggested that "one-man" stores should agree to remain open for not more than fifty hours a week, since it was felt that a pharmacist could not operate efficiently for a much longer period.[173] By 1960 the Council was considering the report of a special committee that recommended that minimum standards should be met before a drugstore was licensed.[174]

Although the Council was not yet prepared to impose such standards, an Act was passed in 1960 which entitled it to make regulations with the consent of the Lieutenant Governor in Council requiring that each pharmacy keep certain books and records and that it make returns to the Registrar concerning them.[175] By 1964 the government's attitude had changed, and the Act of that year[176] provided that the Council, with government approval, might make regulations prescribing standards for maintenance and operation of pharmacies. The provision was not proclaimed in force until January 2, 1967, however.

In spite of the new controls the 1953 Act set up over pharmacies, new types of pharmaceutical operation were springing up which, in the opinion of the Council, were not carrying on business in an ethical manner. Among these were the discount and mail-order pharmacies. In 1960 one member addressed the Council as follows:

> The increase of discount houses dealing in drug and allied products is causing much concern. These intruders are using devious methods, we believe, to inveigle some members of our profession into becoming associated with them. It is deplorable that our professional ethics are being held so cheaply by these pharmacists and that they should endeavour to rationalize their desire to join these groups by specious argument. Let us remind them that there is no compromise with honesty and integrity.[177]

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[170] Minutes of OCP, June 1957.
[171] *Ibid.*
[172] Minutes of OCP, November 1958.
[173] Minutes of OCP, June 1957. In 1962 the Infringement Committee reported that it had sent letters to several one-man pharmacies suggesting that shorter hours be kept and had generally received a favourable response. (Minutes of OCP, June 1962.) By 1964 this had become the practice where such a pharmacy was open for more than sixty hours a week.
[174] Minutes of OCP, June 1960.
[175] S.O. 1960, c. 82, s. 3.
[176] S.O. 1964, c. 89.
[177] Minutes of OCP, November 1960, p. 1685.

There was comparatively little that could be done to inhibit the growth of discount pharmacies, but the Council was able to deal with mail-order pharmacies to its satisfaction. The major mail-order pharmacist, Mr. Rubin, conducted his business from an apartment which was scantily stocked with drugs. His principal business was supplying drugs by mail to those who were chronically ill. A hearing was held to determine whether this type of business constituted a pharmacy within the meaning of the Act. It was decided it did not, and so the apartment's address no longer appeared as Rubin's business address in the Register. Since the Council circulated "change" lists showing the addresses of pharmacies appearing on the Register to manufacturers and wholesalers, many of these would not send drugs to an address that did not appear. When Rubin appealed the decision, the Court upheld the Council's action.[178]

Another source of frustration to the Council was the developing traffic in pre-1953 charters, which did not require that the majority of shareholders be pharmacists. By 1961 the Council had begun to discuss means of cancelling such charters with the Provincial Secretary.[179] It did not appear that much aid could be given by this official, because when Zellers Limited bought such a charter the next year, the Council considered refusing to register the pharmacy and bringing action against the company as contravening the extent of the Pharmacy Act.[180] It was eventually decided, however, that the best course of action was to seek legislation to cover transactions involving such charters.

Faced with the growth of discount houses, the Council continued to investigate pricing methods. They soon realized that they could not impose any system on the members, since drug pricing methods were being investigated also by the Director of Investigation and Research of the Combines Investigation Branch. His report recognized the profession's argument that service to the public would suffer if unrestricted price-cutting on drugs and prescriptions became widespread; but he also felt that the College was acting in the dual capacity of a public protector and trade association, and that there was a conflict between the two roles. The Council appointed a special committee to consider this report, and as a result another committee was formed to consider prescription pricing.[181] This committee eventually recommended that the Council endorse the principle that a professional fee be charged for the dispensing of a prescription. Although the fee would vary according to area and circumstance, the Committee suggested $1.75 as a proper fee. The Council adopted this suggestion.[182]

The other commercial aspect that seemed to the Council to reflect on the professionalism of pharmacists was their advertising methods. Types of advertising

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[178]*Rubin v. Ontario College of Pharmacy* [1961] O.R. 398.
[179]Minutes of OCP, October 1961.
[180]Minutes of OCP, October 1962.
[181]Minutes of OCP, June 1961.
[182]Minutes of OCP, October 1962.

that the Council felt objectionable ranged from those claiming lower prices[183] to those promising to give "complete advice on your problems".[184] In 1964 the Council decided it had jurisdiction to discipline advertisers for improper conduct in a professional respect, if the advertisement in question implied that the pharmacist was providing some service not given by other registrants, or was in some other way detrimental to other members of the profession.[185] An attempt to discipline on this basis failed, however. In *Re Starkman v. Ontario College of Pharmacy*[186] it was held that, although it would be considered professional misconduct to attack the integrity of fellow practitioners, the advertisements involved could not be construed as such an attack, but were rather ordinary permissible "puffing".[187] This decision was a setback to the Council; but at the next meeting, it was pointed out that the case merely held that the advertisements complained of did not constitute an attack on the profession's integrity, not that such an attack was not considered improper conduct.[188]

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[183]Minutes of OCP, January 1965.
[184]Minutes of OCP, January 1962.
[185]Minutes of OCP, October 1964.
[186](1966) I O.R., 175.
[187]Some of the advertisements complained of read:

> We specialize in being different. The confidence of your doctor and doctors from coast to coast. Only the finest graduate chemists to serve you. Honesty and integrity plus low, fair prices.

[188]Minutes of OCP, January 1966.

Chapter 5 Nursing

Nurses

Several factors inhibited the members of the nursing profession in their search for legal self-control. They were the first subordinate group to have such ambitions; and since they acted under the direction of a medical superior, and performed and were educated mainly in a hospital setting, it was logical to expect that those who directed them should take responsibility for their training and behaviour.[1] Probably for this reason doctors, and later hospitals, were always given representation on the various advisory boards set up under the Act.

Then too, all the other self-governing professions had a long evolutionary history (some members of the medical profession began as barbers), while nursing had only recently been elevated from a somewhat degraded job to a responsible occupation which required professional training. Perhaps because of this recent elevation in status, in their early struggles nurses insisted that only graduate nurses should be allowed to work in hospitals.

By far the greatest handicap faced by the nurses, however, was that they were a feminine profession seeking power in a world still dominated by men. At the time they began to organize, men still believed that women were incapable of managing worldly matters, although this notion was already being disturbed by the activities of suffragettes. It is not surprising then, that a Legislature composed of men, middle-aged and older, should be reluctant to pass the control of the profession into the hands of the nurses.

By the turn of the century, nurses trained in hospitals were forming alumnae groups, and in 1904 these groups formed the Graduate Nurses' Association of Ontario.[2] In 1906 the Association succeeded in having a Bill presented to the Legislature that would give trained nurses certain privileges.[3] Although no member objected to the principle of this measure, many objected to its provisions on the grounds that the qualifications required were too high, and the privileges granted those qualified were too great.[4] The Bill was referred to a Special Committee for consideration,[5] and when that Committee reported a slightly amended Bill, the

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[1]For example, in 1893 the Council of the CPSO discussed the desirability of inaugurating a register for nurses.

[2]Muriel A. Ward, *An Assessment of the Effectiveness of Nursing Legislation in the Province of Ontario,* a report prepared for the RNAO, July 1964, p. 7.

[3](1906) Second Session of the Eleventh Legislature of the Province of Ontario, Bill 106.

[4]*Globe,* Toronto, March 23, 1906.

[5]*Ibid.*

Premier referred it back for further consideration.[6] This time the Committee completely changed the sections governing the composition of the Council and the educational requirements.[7] These changes satisfied neither the opponents of the Bill nor its sponsors, and it was withdrawn on May 2, 1906.[8]

As it was originally presented, the Bill reflected the aims of the nursing profession, aims which they continued to pursue and to some extent have only recently achieved. The measure recognized the Graduate Nurses' Association of Ontario as the registering agent of all trained nurses in the province, and conferred on its registrants the right to use the title "Registered Graduate Nurse". Registration was to be dependent on completing the course of study prescribed by the Association and passing Association-administered examinations.[9] Once registered, nurses would be subject to disciplinary proceedings for professional misconduct. Finally, the Bill provided that an unregistered person could not be appointed to act as a nurse in a hospital receiving provincial funds.

Almost all these provisions were altered in the amended Bill reported by the Special Committee. The Association was to be governed by a Council which originally was to consist of four doctors and eleven nurses who were members of the Association. Of the nurses, not more than three were to be superintendents of nursing schools.[10] There was a good deal of opposition to the Council in this form, and the Committee felt that a more appropriate form of Council would consist of a majority of men representing the medical profession and the hospitals. The amended Bill provided that the Council would consist of four doctors and four members of the hospital boards appointed by the Lieutenant Governor in Council, and seven nurses elected by and from among the members of the Association.

The Special Committee also considered that the registration requirements were too strict. Under the amended Bill, the Council's power to supervise education was limited to approving training schools. Graduates of these schools would be entitled to registration without any further examination.[11]

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[6]*Globe*, Toronto, April 23, 1906:

> The Premier gave as his grounds for reading the Bill back to Committee that he had received so many communications both in favour and opposed to the measure's provisions and that when there was so much feeling on both sides of the question, he thought the Bill should have every consideration.

[7]*Globe*, Toronto, April 27, 1906.

[8](1906) Journals of the Legislature of Ontario, Second Session of the Eleventh Legislature, p. 306.

[9]A grandfather clause would allow registration of nurses presently in practice who had graduated from a two-year training course, if they registered within a year.

[10]This provision showed some foresight, since later one of the frequent complaints of its members against the Association was that its government was top-heavy with supervisory personnel.

[11]The Committee had been less severe in its first report. Then its members had been content with extending the period for registering under the grandfather clause to two years and providing that the Association's examinations should be held in at least three centres throughout the province.

The greatest stumbling-block, however, was the provision giving registrants the exclusive right to nurse in hospitals. Throughout the history of professional nursing, people have been concerned to protect the nurse who lacks training but looks after the sick very competently in spite of the lack. On this point the Committee was adamant and refused to allow the provision to remain in the measure at all. Thus, the whole Bill was changed out of recognition, leaving the Association little choice other than to withdraw.

The Association prepared another draft Bill in 1910, but it was never presented.[12] Instead, a provision was included in the Hospital and Charitable Institution Act[13] that authorized the Provincial Secretary to keep a register that was open to graduates of training schools in hospitals receiving aid under the Act. The sole effect of registration was that registrants were given the exclusive right to use the designation "Registered Nurse". In 1914 a provision was added to the Act making it an offence for any unregistered person to use this title;[14] but the Register was not actually established until 1920.[15]

Even if the Register had been instituted sooner, the provision had several defects from the nurses' point of view. It excluded nurses who had graduated from hospitals not included within the Act, and, most important, there was no provision for setting standards for either training schools or their students.[16] The Graduate Nurses' Association of Ontario felt that the imposition of such standards was of prime importance, and representations to this effect were made to Mr. Justice Hodgins during his Commission. In his Report, the Commissioner recommended that standards be imposed on training schools, that nursing students be required to meet minimum educational requirements before beginning their training, and that they pass a registration examination when it was completed.[17]

At a subsequent meeting between representatives of the GNAO and the Executive Council, the government agreed to implement these recommendations[18] and the GNAO prepared a set of regulations under the guidance of the Department of Education. When they were completed, the Provincial Secretary initially refused

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[12]*Historical Information on Nursing Legislation in Ontario,* via the form of a questionnaire completed in June 1949 for Miss Leonore M. Ross, Instructor in History, Smith College, Northampton, Massachusetts, RNAO Library, p. 2.

[13]S.O. 1912, c. 85, s. 14.

[14]S.O. 1914, c. 143, s. 66.

[15]Miss E. Macpherson Dickson, *Survey 1923* (unpublished study in RNAO Library), p. 2.

[16]*Ibid,* p. 2. In her study Miss Dickson described the situation as follows:

> These training schools were not established with the idea of preparing young women to care for the sick, but rather as a means of providing an economical service to the sick in the hospital — a service which always included a great part of the domestic work rather than purely nursing service.

[17]Hodgins, *Report on Medical Education in Ontario,* Toronto, 1918, p. 43.

[18]Miss E. Macpherson Dickson, *op. cit.,* p. 3.

to accept them, since they had been prepared by another government department.[19] Eventually, however, through the intervention of the Inspector of Hospitals he was persuaded to accept them, and in 1922 the Nurses' Act was passed.[20]

1922-1951

The Nurses' Act, 1922

This Act replaced the provision in the Hospitals and Charitable Institutions Act, instituting a new provision for the registration of nurses. Although the Provincial Secretary was to continue to maintain the Register, all other administrative power was given to the Lieutenant Governor in Council. This power included the right to make regulations concerning the Act and to appoint administrative officers and an advisory board. Aside from any regulations, the Act provided that any hospital, mental hospital or sanatorium could establish a training school, and that graduates of such schools could be registered.[21]

When this measure was first presented to the Legislature, the Members felt that they ought to know how the Lieutenant Governor in Council intended to use his regulatory power and refused to consider the Bill unless the draft regulations were considered along with it. Many Members objected to the Bill's proposal for the creation of a Council on Nurse Education which would include representatives of the Graduate Nurses' Association of Ontario. This regulation was deleted, and the Act was passed.[22] The regulations were concerned with the approval of training schools and the registration of graduates.[23] They provided that a training school would be approved only if it offered a course lasting two years and consisting of a specified curriculum. If the hospital had not the facilities for all the required training, it might affiliate with some other better-equipped institution. According to the regulations, a nurse who wished to be registered must be at least twenty-one years old and have graduated from an approved training school. In addition, she must pass a uniform registration examination. Finally the regulations provided for the appointment of an Inspector of Training Schools, whose duties included keeping a register of approved training schools.

After the Act was passed, there were so many objections to the regulations from the hospitals, that the government decided not to implement it until a survey could be made of hospital nursing schools.[24] The Act finally came into effect in

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[19]*Historical Information on Nursing in Ontario, op. cit.*, p. 3.

[20]S.O. 1922, c. 60.

[21]Apparently registration was to some extent discretionary, since in 1929 the Act was amended to make registration mandatory on graduation from an approved school. S.O. 1929, c. 87.

[22]This account of the passing of the Act is taken from "Outline of the Hostory of the R.N.A.O. with particular reference to organized efforts to secure necessary legislation" by Miss E. Macpherson Dickson prepared for the RNAO in April 1932 and found in the RNAO Library.

[23]Regulations under the Nurses' Act, Queen's Printer, Toronto, 1924.

[24]Outline of History of RNAO, pamphlet, RNAO Library, p. 11.

March 1923, when an Inspector of Training Schools was appointed and applications for registration were considered.[25] In 1924 administrative responsibility for the Act was transferred to the Department of Health.[26] At the same time the regulations were amended to include the provision establishing the Council on Nurse Education that had been dropped at the instance of the Legislature in 1922.[27]

The Council was composed of seven members, including three nurses engaged in education, two doctors, the Inspector of Hospitals and the Inspector of Training Schools. No specific duties were assigned to the Council. It was intended that it should advise the government on matters relating to nursing. For the first time, nurses were given an official position in determining the policies that governed their profession.

During this period there was growing acceptance of the professional status of nurses on the part of the public. In 1920 the University of Toronto established a Department of Public Health Nursing and in 1933 transformed this department into a professional school of nursing.[28]

In fact nursing had become so popular that many girls who had not the qualifications to enter a training school wished to enter the profession. A number of schools sprang up offering to train these girls. Some offered courses by correspondence, others operated in nursing homes, but were approved under the Act or offered a course equivalent to that given by a hospital school. Unfortunately, their students often were unaware that they would not be qualified to write the registration examinations.[29] In 1938 an Act was passed in an attempt to remedy this situation,[30] providing that no training school for nurses could be established without the consent of the Minister of Health.

The 1944 Act

In 1944 the administrative and regulatory sections of the Nurses' Act were re-enacted so that a new and fairly precise relationship was set up between the government and the profession.[31] Regulatory power still remained with the Lieutenant Governor in Council, but administrative control passed from the Department of Health to a Director of Nurses' Registration who was to be appointed by the government. According to the new regulations passed that year,[32] the new Director's duties included maintaining the Nurses' Register and recording the

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[25]*Historical Information on Nursing Legislation in Ontario, op. cit.*
[26]*Ontario Gazette,* part 1, 1924, p. 828.
[27]Regulations under the Nurses' Act, Queen's Printer, Toronto, 1924.
[28]The Nurses' Act was amended to provide that a training school might be operated by a university to accommodate this change. S.O. 1933, c. 54.
[29]*Globe and Mail,* Toronto, February 25, 1938.
[30]S.O. 1938, c. 25.
[31]S.O. 1944, c. 42.
[32]O. Reg. 221/44.

names of approved training schools. The regulations also slightly changed the composition of the Council on Nurse Education[33] and for the first time defined its powers. The main duty of the Council was to advise the Minister of Health in setting minimum course requirements. In addition, all applications to open training schools were referred to the Council, although formal approval came from the Minister of Health.

The Act had provided that regulations might be made concerning discipline, and this matter was dealt with in the new regulations. Discipline cases were to be heard by the Council, although their only power was to recommend appropriate action to the Minister of Health.

The grounds for discipline were different from those usual in the professional registration Acts. The most notable difference was the absence of professional misconduct, another instance of the feeling that nursing could not seriously be considered a profession. On the other hand, nurses were the first group in the healing arts to make malpractice grounds for discipline. Furthermore, mental or physical incapacity, and alcohol or drug addiction were recognized as conditions which required the withdrawal of the privilege of practice.

Nursing Assistants

By this time the public had become aware that there was grave shortage of nurses. To a large extent, of course, this was due to the large number serving in the war,[34] but there were other factors involved, such as the retirement of married nurses[35] and the conditions of nurses' training.[36] A large part of this shortage was filled by practical nurses, graduates of the correspondence or nursing home courses which had continued to offer training in spite of the 1938 Act. The graduate nurses themselves realized the need for this category of nurses and sponsored several training courses for them. In 1945 the government gave recognition to their usefulness by presenting a Bill which permitted them to be registered under the designation

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[33]The Council was enlarged to include nine members. It must include the Minister of Health, the Director of Nursing, an Inspector under the Public Health Act, one doctor, an officer of the Department of Education and three nurses nominated by the Registered Nurses' Association of Ontario, which was the successor organization to the GNAO.

[34]There had been a certain amount of government activity aimed at keeping the loss of nurses to the war effort as low as possible. In 1941 a plan to raise the minimum entrance standard to training schools to the secondary school graduation diploma was deferred until 1943. (*Globe and Mail,* Toronto, June 28, 1941.) The federal government appropriated $115,000 for facilities and scholarships for nurses. (*Globe and Mail,* Toronto, July 23, 1942.) In 1943 it also set a requirement that all nurses in Canada register, so that it could be determined what areas could best spare them.

[35]*Globe and Mail,* Toronto, October 23, 1943.

[36]The government also made some attempt to make the training course physically easier. The regulations published under the 1944 Act limited working hours to fifty-eight per week, specified limited hours on special duty, and provided that students be given two weeks' annual vacation.

"Registered Assistant Nurse."[37] But this Bill was withdrawn in favour of another more detailed measure, which was passed in 1947,[38] with provisions almost paralleling the Nurses' Registration Act. The Lieutenant Governor in Council was given the power, with the aid of the Council on Nurse Education, to make regulations concerning the education, registration and discipline of these nurses. Upon graduation from an approved course, the student was entitled to registration as a "Certified Nursing Assistant". The Act also attempted to raise the training standards by providing that all training schools must be located within hospitals.

When it accepted the concept of a certified nursing assistant, the nursing profession gave up its ideal that the exclusive right to practise in hospitals belonged to the graduate nurse. It is to the credit of the profession that it recognized the need for a less highly trained class of nurse, abandoned the earlier objective, and turned its attention to helping to formulate a course of education and to achieve an assured position for this group.

1951-1962

In 1951 a completely new system was set up for registering nurses. Two new Acts were passed, one dealing with registered nurses,[39] and the other dealing with certified nursing assistants and training schools.[40]

The Nurses' Registration Act transferred the responsibility for registering and regulating the training of nurses to the Board of Directors of the RNAO,[41] thus fufilling an ambition that had been nurtured since 1906. This is the only instance in the health professions where regulatory power over a profession has been given to a body in which membership is voluntary.

The Board had power to make regulations, subject to the approval of the Lieutenant Governor in Council, concerning the education, examination, registration and discipline of nurses. In a disciplinary action an appeal lay from the Board to a Judge of the Supreme Court of Ontario. The new regulations made by the Board[42] differed little from those published in 1944, and most of the changes were those made necessary by the change in legislation. For example, the duties of the Director of Nursing were transferred to a Registrar. The only substantive changes were a slight increase in the entrance requirements and a rearrangement of the subjects to be taught into practical and theoretical subjects.

The RNAO was not given full control over the profession. Under the Nursing

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[37](1945) Second Session of the Twenty-First Legislature of the Province of Ontario, Bill 66.
[38]S.O. 1947, c. 71.
[39]S.O. 1951, c. 58. The Nurses' Registration Act.
[40]S.O. 1951, c. 59. The Nursing Act.
[41]For the purposes of the Act, the Minister of Health was made an ex officio member of the Board.
[42]O. Reg. 48/52.

Act, the Department of Health retained control of the registration of certified nursing assistants and the approval of training schools. This Act continued the scheme set up in 1944, but the Council of Nursing was reduced to eight members.[43] There was one important change: the requirement that training schools be affiliated with universities or hospitals was dropped. This change allowed experiments in new methods of nursing education: first, in private schools for nursing assistants; later for such courses conducted in high schools and community colleges; and finally for non-affiliated nursing schools, such as Florence Nightingale and Quo Vadis.

Although the Act allowed non-hospital schools for nursing assistants, as soon as a private commercial school was set up, the nursing establishment opposed it. About 1957, with the approval if not the encouragement of the Department of Health, the Canadian Schools of Practical Nursing set up a pilot course to train nursing assistants. In 1959 the Minister of Health, Dr. Matthew Dymond, announced that, on the advice of the Council of Nursing,[44] the school's "approved" status would not be continued. The reason given was that its students did not receive adequate practical training.[45] The Director of the school replied that this inadequacy was the fault of the Department. When he had asked for guidance, he said, the reply was that, since the school was a commercial one, it was responsible for its students' receiving proper training.[46] The decision caused such a public outcry (including a march on Queen's Park by the school's graduates) that the government announced that it would give the matter further consideration.[47] But on December 19, 1959, it was announced that the decision not to renew would stand. Students presently taking the course, however, would be allowed to write their certification examinations.[48] The RNAO ended the affair with a statement that lent credence to the school's charge that its animosity was the cause of the Department's withdrawal of approval. The members of the Association were of the opinion that "a commercial organization cannot provide instruction of the same calibre as the government-operated schools".[49] They also felt that it would endanger the public

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[43] O. Reg. 48/52. The members were the Minister of Health, an officer of the Department of Education, two doctors and four registered nurses.

[44] *Globe and Mail,* Toronto, November 24, 1959.

[45] Whatever the defects in their practical experience, the theoretical knowledge of the school's students was sound, since 98 per cent passed their examinations. *(The Telegram,* Toronto, November 29, 1959.) It was also a popular course. In the two years of its existence, it graduated 300 students compared to 288 in the fifteen government-sponsored schools. *(Globe and Mail,* Toronto, December 17, 1959.)

[46] *The Telegram,* Toronto, November 18, 1959. It seems clear that there was some sinister influence at work. Trainees of the school in the Scarborough General Hospital were dismissed and told that the hospital had been ordered to fire them by "someone in the government". *(Globe and Mail,* Toronto, November 24, 1959.) The hospital later denied that their decision had been thus influenced and rehired the students. *(Globe and Mail,* Toronto, November 25, 1959.)

[47] *The Telegram,* Toronto, November 20, 1959.

[48] *Globe and Mail,* Toronto, December 18, 1959.

[49] *Globe and Mail,* Toronto, November 29, 1963.

to allow the present students to write their examinations. Shortly afterwards, with the approval of the RNAO, a course was set up in an Etobicoke high school integrating academic, theoretical and hospital training for Certified Nursing Assistants.

After the end of the Second World War, there had been a number of suggestions both from nurses and from government that the training course for registered nurses be reduced to two years. These suggestions were always hotly opposed by the hospitals, which depended on students to carry a large part of the nursing load. By the late 1950's, however, a number of hospitals had instituted a two-year training program for students, who then had to serve an additional year of internship. Evidently a two-year course was sufficient to provide an adequate training, and it was decided to set up an independent school under the auspices of the Ontario Hospital Services Commission. The Florence Nightingale School of Nursing was opened in 1960. It had its own governing body and was to have complete control over its students, both academically and, more important, over their clinical experience in nearby training hospitals.

Practical Nurses and Nursing Registries

The case of the Canadian Schools of Practical Nursing illustrated the rooted objection of the RNAO to anyone who had a commercial interest in nursing. This distaste was reflected in a 1957 amendment to the Nursing Act,[50] which provided for the regulation of practical nursing schools and nursing registries.

When the category of certified nursing assistants was created, one of the assurances given by the government was that the legislation would not eliminate the practical nurse.[51] These were women who wished to become nurses, but who lacked the qualifications to be trained as C.N.A.'s and felt they were too old for a hospital-based course. Because there was such a shortage of nurses and nursing assistants, practical nurses were almost assured of finding jobs also. A number of commercial schools offered them training, many by correspondence. The 1957 Act sought to control these schools. It provided that no one might operate a school to train practical nurses unless it were approved by the Minister of Health. Detailed regulations were made under the Act, ranging from the general conduct and management of the school to the maximum fee that could be charged.[52] For example, it was provided that fees must be refunded to a person leaving the course in proportion to the amount of the course taken. The course itself was subject to the inspection of the Director of Nurses and her staff, and each school had to make an annual report to her. Finally, it was provided that no one might offer to

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[50]S.O. 1957, c. 82.
[51]*Globe and Mail*, Toronto, March 12, 1945.
[52]O. Reg. 225/57.

train practical nurses by correspondence. Three years later, however, it was decided that these schools were more in the nature of trade schools, and supervision of them was transferred to the Department of Education.[53]

The other commercial aspect of nursing to be regulated by the 1957 Act was the nursing registries. These registries supplied nurses, for a fee, both to the public and to hospitals. Since R.N.'s were so much in demand, operators had few on their books, and their supply therefore consisted mostly of practical nurses and undergraduates, students who had dropped out of the training courses before its completion. The Act provided that an annual licence be obtained from the Director of Nurses for each operating branch of a nursing registry; and it authorized regulations governing the conditions of issuing, cancelling and suspending licences, and regulations for exempting altogether certain registries from the licensing requirements.

When the regulations were published,[54] they exempted registries run by the RNAO, by ten or more Registered Nurses, or by a public hospital. All others had to comply with fairly stiff requirements. In order to obtain a licence in the first place, the applicant had to show not only that she was of good character, which is a fairly universal requirement, but also that she was financially responsible. Once given a licence, she must carry on business according to the regulations, which ranged from the amount of commission she might charge to the provision of an annual check against T.B. The most serious blow dealt by the regulations, however, was the limitation of the categories of nurses the operator could have on her register: R.N.'s, C.N.A.'s, and graduates of approved schools of practical nursing. All others would have to be released. This meant a drastic reduction of personnel in most registries, since most of the girls on the registries were undergraduates.

The College

Since the first Nurses' Register was set up in 1912, the nursing profession has undergone great changes. A well-defined hierarchy of nursing has developed, ranging from Registered Nurses at the top, through Certified Nursing Assistants, to practical nurses. Educational concepts have changed. The student nurse is no longer regarded as the backbone of the hospital's nursing staff; to a certain extent she has become independent of the hospital. Overseeing these changes has been

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[53]The attitude towards practical nurses should be contrasted with that shown towards nurses with a more acceptable non-commercial background. With the creation of the Ontario Hospital Services Commission, categories of hospital personnel became rigidly standardized, and it was found that there were certain types of nurses who did not properly fit into any category. Nurses trained in Toronto's Grace Hospital are an example. To correct this situation, an Act was passed in 1961 (c. 90), providing that regulations could be made to register such women as Certified Nursing Assistants. According to the regulations, these applicants might be registered if the course they had taken was equal to a nursing assistants course. The equivalence was to be determined by the Director of Nursing. O. Reg. 102/62.

[54]O. Reg. 225/57.

a multiplicity of regulatory bodies, often with overlapping areas of authority. Since 1951 especially, the duties of the Department of Health, the Council of Nursing and the RNAO have not been clear.

Earlier, such power as the nurses had to regulate themselves was in the hands of the RNAO, which was a voluntary organization that did not have the support of the whole profession. Indeed, at one time an opposition group was organized.

The nurses came to believe that the best way to resolve their problems was to transfer control over both nurses and nursing assistants, and their training to a College of Nurses. This was first proposed to the Department of Health in 1960. The Minister of Health, Dr. Matthew Dymond, welcomed the idea in principle, although he said he preferred the Department to keep control of the C.N.A.s'.[55] The nurses continued to press for total control, and in 1962 an Act was passed founding the College of Nurses.[56]

The College was to be governed by a Council composed of the Minister of Health ex officio, four representatives appointed by the RNAO, one appointed by the Association of Certified Nursing Assistants of Ontario, and representatives elected by the registered nurses.[57] The Council was given regulatory power over the registration of nurses and certified nursing assistants, their education and discipline, and also the power to approve training schools.

The Council did not have sole power over training schools for long, however. The 1963 Act provided for an Educational Advisory Committee to advise the Council on matters pertaining to schools of nursing and training centres. All regulations concerning these institutions were to be submitted to the Committee at least thirty days before they were given to the Lieutenant Governor in Council.[58]

In 1964 an Act was passed which once again transferred the power to approve training schools to the Lieutenant Governor in Council; but he was to act on the recommendation of the College.[59]

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[55]*Globe and Mail,* Toronto, November 28, 1960.

[56]S.O. 1961-62, c. 90. An amending Act was passed in 1963 which changed the name to the College of Nurses of Ontario. It also provided that all registered nurses in the province should be members of the College, a provision which had been omitted from the original Act. S.O. 1962-63, c. 92.

[57]For the purpose of electing representatives, the province was divided into twelve electoral districts. From each of these districts one representative was to be elected for each 5,100 nurses within the area.

[58]The Council, however, was given the power to regulate the composition of this body. It was to consist of four nurses, two from the Council and two from the RNAO. The other members represented the various other bodies who might be presumed to have an interest in the education of nurses. There was one member from each of the OHSC, the Ontario Hospital Association, the Department of Education and the university medical schools. Finally, nursing schools were allowed to send one representative. (O. Reg. 132/63.)

[59]S.O. 1963-64, c. 73.

Chapter 6 Optometry

Optometrists

Like dentists, most of the early optometrists were itinerant. Few of them had any training, but most people considered that little education was needed to practise optometry. For example, in 1898 the College of Pharmacy considered introducing one course in optics into its curriculum, so that its graduates might practise in this lucrative field.[1]

By the turn of the century, however, a number of permanent practices had been established in the more populous areas. These practitioners formed an association in 1909 and began to press for legislation that would give them professional status.

The first Bill was presented to the Legislature in 1911.[2] Dr. Harvey, the President of the Association, gave an account of the history of the Bill to the *Globe*:

> Dr. Harvey explained that the association was established in 1909, Dr. Thomas Wylie, who was for 12 years a member of the Ontario House, being President and having just gone out of office. During 1910 the members of the organization thought it was time to secure legislation in order to protect the public against imposition on the part of charlatans who pretended to be able to give the public treatment which they were not qualified to give. . . . In January of this year, accordingly the association decided to bring up a bill which was introduced by Dr. W. K. McNought. The association went last year to the Attorney-General and Provincial Secretary and secured a charter, since when it has conducted its business as every chartered institution has conducted its business, subject to government inspection and jurisdiction.[3]

The Bill provided for a five-man Board of Examiners who had knowledge of optometry to be appointed by the Lieutenant Governor in Council. This Board was to prescribe and conduct examinations for those who wished to be granted a certificate of qualification to practise. The Secretary of the Board, also appointed by the Lieutenant Governor, was to keep a Register of those who had been granted such certificates and make an annual return to the administering Minister of the certificates granted and those refused. Those who were presently practising would be

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[1]Minutes, Ontario College of Pharmacy, 1898.

[2](1911) Third Session of the Twelfth Legislature of the Province of Ontario, Bill 181. Entitled, "An Act Respecting Opticians", it defined an optician as a person "who for gain employs any means other than drugs, medicine or surgery for the measurement of the power of vision and the adaptation of lenses and prisms for the aid and correction thereof".

[3]*Globe*, Toronto, March 3, 1911.

entitled to a certificate without undergoing an examination if they applied before July 1, 1911 and if they were prepared to give such evidence of "sobriety, good character, and experience" as the Board required.

The Lieutenant Governor in Council was also to make regulations concerning examination of candidates, the proof of good character, the period and terms of renewal of licences, the various fees to be charged by the Board, and, finally, the reasons for which the licence might be cancelled or suspended.

The sole privilege conferred upon the certificate holder was the right to use the designation "Optician", or any other word or abbreviation implying that status. If, however, he did not keep his certificate on display at his office, it would be taken as prima facie evidence of his lack of qualification. Finally, the measure was not to apply to medical practitioners, nor would it prevent persons from selling spectacles which were chosen by the purchaser without the aid of the vendor.

Although the Bill was quite modest in its aims and left control of the profession in the hands of the government, it met so much opposition in the Legislature that it was withdrawn. The usual objection — that it tended to form a "close corporation" — was based not so much on the legislation itself, but on a circular sent by the Association to all the optometrists in Ontario, urging them to join that body and thus avoid the need for a qualifying examination.[4] According to one member of the House, the circular was accompanied by a printed letter couched in such terms as to make the recipient believe that the Bill would pass, and that he would save money by joining the Association at once and paying a minor fee.[5] The House looked upon this as an attempt to use the passage of legislation as a means of raising money for the Bill's sponsors, and naturally refused to send it to the Committee. Thus the only course remaining to the Association was to withdraw the Bill.

In spite of this setback, another Bill was introduced the next year,[6] this time at the instance of the Canadian Ophthalmic Clinic. This was a completely new measure and put the control of the profession squarely in the hands of the Optometrical Association of Ontario. The membership in the Association was to be limited to present members and to those to whom it granted licences. These members were to elect a nine-man Council, which would manage the affairs of the Association, including the regulation of licensing examinations. The members were also to elect a provincial examination board of ten members, five of whom would be declared to be the Board by the Lieutenant Governor in Council. These men were to set and conduct the licensing examinations. Successful candidates would be

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[4]The circular read: "Do you want to practise optometry legally in Ontario? Then you have just 10 days more in which to register without an examination, and without having to pay an examiner's fee of $10,00. All in by March 1st will be exempt from examination and will get optometrical license." *Globe,* Toronto, March 1, 1911.

[5]*Ibid.*

[6](1912) First Session of the Thirteenth Legislature of the Province of Ontario, Bill 169.

granted a "Licentiate of Optometry" and entered in a register which was to be kept by the Council's Secretary. The measure contained no grandfather clause, but a graduate of an established school of optometry could be admitted to membership without examination with the consent of the Council. As in 1911, the only privilege conferred by the Bill was the right to use the designation "Registered Optometrist" or any other title that would imply that the user was registered.

The government once again refused to consider the Bill, and it was withdrawn when it came up for second reading.[7] In 1913 the Association sponsored a similar Bill.[8] It added a one-year apprenticeship period before the candidate wrote the examinations. In addition, it provided that after a hearing, the Council could revoke a licence for "violation of the law, incompetency, inebriety, fraud or misrepresentation".[9] Like its predecessor, this Bill was rejected by the government on the grounds that it created a "close corporation".[10]

During the war the Association abandoned its attempts to secure legislation. In 1919, however, a Bill was again put before the Legislature and this time was passed.[11] This measure was much closer in spirit to the 1911 Bill than the two presented in the succeeding years. The Lieutenant Governor in Council was to appoint a five-member Board of Examiners and appoint one of them to be Secretary. With his approval, the Board could make regulations concerning the course of training for those seeking registration and providing for such a course to be given by any institution in Ontario. Provision could also be made for accepting registered optometrists from the other provinces. Finally, the Board could make regulations as to fees for examinations and registration. The Secretary was to maintain a register of all qualified optometrists. Registration was to be granted on passing the qualifying examination, which could be tried only after the educational qualifications set by the Board had been met. Anyone who was practising at the time the Act was passed could apply for a certificate and exemption from registration, provided that he was a British subject and possessed such educational and technical qualifications as might be prescribed by the regulations.

The Board could also revoke an optometrist's registration after a public hearing, if it found that the holder had been guilty of illegal practices, incompetence, inebriation, fraud or misrepresentation. On the same grounds it could prohibit an

[7]In rejecting the Bill, Hon. I. B. Lucas, speaking on behalf of the government, said that "the purpose of the bill was to give opticians some standing with a view of protecting the public. At the same time too much power was sought by the Association who elected its own Board of Directors, appointed the Examiners and arbitrarily selected the requirements which candidates had to meet". *Globe*, Toronto, March 18, 1912.

[8](1913) Second Session of the Thirteenth Legislature of the Province of Ontario, Bill 195.

[9]S. 15.

[10]Once again the Hon. I. B. Lucas spoke for the government. He said, "This looks like what some newspapers call a close corporation. You are starting in with organizations without having any means of turning out opticians." *Globe*, Toronto, February 21, 1913.

[11]S. O. 1919, c. 39.

unregistered optometrist from practising, and it was made an offence for a person under such a prohibition to practise. After ninety days, however, an application for reinstatement could be made.

The Act prohibited those who were not registered from using the designation "Optometrist" or "Optician" or any other title that would lead people to believe that he was registered under the Act. Although it was really only a certification as opposed to a licensing Act, it contained several provisions that affected all those who dealt in the area of eye care. For example, a prohibition was included against selling glasses from house to house, or in any way other than from a permanent place of business.

Finally, it was provided that every person buying a pair of glasses should be given a bill of sale containing the signature and address of the supplier, together with the specifications[12] and price of the glasses. If they were supplied by a registered optometrist, the bill would also have to contain his registration number.

The first regulations under the Act were published in 1920.[13] For the first time a distinction was made between an optometrist, as one who measured optical errors and prescribed glasses, and an optician, as one who dispensed spectacles on the prescription of a doctor or optometrist. The regulations set out the educational qualifications for both these groups,[14] and registration was to be dependent on passing the Board's examinations on completion of these courses. All war veterans and those holding certificates of exemption could write the licensing examinations without completing the educational requirements.

Usually when the Lieutenant Governor is given the power to appoint, he takes advice as to who would best fulfil the office. If the appointment is to a professional Board, he will most often consult the professional association, in this case the Ontario Optometrical Association, and usually the executive of the Association become members of the Board.

The opponents of the Association objected to this policy, and in 1921 they succeeded in having a Bill introduced which provided that no member of an optometrical association was eligible for membership on the Board.[15] The measure also would have the fees set by legislation rather than by regulation, and provided for the publication of an annual register. There was little support in the House, and the Bill was eventually withdrawn.

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[12]The next year an amending Act was passed which provided that the specifications need not be included in the bill of sale. S.O. 1920, c. 52.

[13]O.G. Vol. 53(1) p. 326.

[14]Optometrists were to take a course of 1,000 hours after completing two years of high school. In 1924 this was reduced to 850 hours. Opticians were to take a course that lasted 400 hours.

[15](1921) Second Session of the Fifteenth Legislature of the Province of Ontario, Bill 243.

At the time the Act was passed, there was no school for training optometrists in Ontario. In 1920 arrangements were made for a course meeting the regulatory standards to be given at Central Technical School, and in 1925 the Board opened its own school, the College of Optometry. In 1925 an Act was passed which gave statutory recognition to the Board's educational efforts.[16] It provided that the Board might enter into an agreement with a university or other school for the teaching of optometrists and opticians, or it might establish its own school.

The creation of the Optometrical Association was the result of a division between the settled practitioners and those who wandered about the country. The Association's members felt the latter to be a threat, not so much to their incomes, but to their desire for professional status, since the itinerants had little or no training. The threat was to a large extent removed by the passing of the Act, which made it an offence to conduct an optometrical practice from anywhere but an established place of business.

A new threat soon emerged, however, and the optometrists were directing all their legislative efforts towards removing it. A group of mail-order houses had sprung up which would sell glasses to a person at his order, after he had self-tested his eyes on advice supplied by the company. Since such organizations operated from an established place of business, they could properly send agents or salesmen throughout the province.

The first attempt at legislation against the mail-order suppliers was made in 1929.[17] This Bill would have made it an offence for any person to sell or prescribe[18] corrective glasses by mail or through an agent or travelling salesman. It would have also become an offence to cause misleading advertisements to be published concerning the sale of glasses, although the sale of magnifying, industrial coloured, and other non-corrective lenses was accepted by the scope of the Act. Finally, the Bill required universal registration by making it an offence for an unregistered person to practise as an optometrist or optician. Although the Bill was sent to Committee without any serious debate, it was not reported and thus lapsed at the end of the Session.

Almost the same fate met a similar Bill introduced in 1930.[19] The Municipal

[16] S.O. 1925, c. 67. The Act also empowered the Board to hold land under the name "The Board of Examiners in Optometry".

[17] (1929) Third Session of the Seventeenth Legislature of the Province of Ontario, Bill 167.

[18] The Bill included a definition of the word "prescribe" to include self-testing by a person with the aid of a machine leased or lent by a third person. This third person would also be considered as prescribing.

[19] (1930) First Session of the Eighteenth Legislature of the Province of Ontario, Bill 115. The Bill was identical to that of 1929 in regard to the measures proposed against the mail-order houses, but gave the Board powers of Commissioner under the Public Inquiries Act in regard to discipline hearings and provided for an appeal to the Supreme Court on the outcome.

Committee to which it was sent did not report the measure, but recommended instead that a Special Committee be set up to consider the matter over the recess and report at the next session.[20]

Although there is no record of such a Committee being appointed, a Bill was introduced in 1931;[21] and after its second reading, it was sent to a Select Committee. The measure met a great deal of opposition from the mail-order men at the Committee's hearing. They charged that the Board was trying to create a monopoly for the registered optometrists,[22] and that the measure would deprive residents of rural areas of any opportunity of obtaining corrective spectacles. The Board replied with horrendous tales of fraudulent advertising and illiterate agents. It also pointed out that it was impossible for an untrained man to properly test his own eyes.[23] As a result of the representations made, the Committee slightly altered the Bill. Mail-order houses would be permitted to sell to the public through retail merchants, and retail merchants would be permitted to maintain an optical department if a registered optometrist were in charge of it.[24] This change did not satisfy the measure's opponents, who charged that the principle was unchanged and a monopoly still created. Even some Committee members thought that the amendments did not properly express the consensus of the Committee.[25] As a result the Bill was amended once again in the Committee of the Whole, so that certain practices would be excepted from the provisions of the Act. These included the practice of optometry by a retail merchant if his optical department were under the charge of a registered optometrist; the sale of glasses by a retail merchant; the provision of an eye-chart by a merchant selling glasses, by which his customers could test their own eyes; and finally the furnishing by mail or agent of such an eye chart to any person who wished to buy glasses. The provision of any mechanical instrument for self-testing was still forbidden, however. This Act also fulfilled one of the Association's aims: registration now conferred upon the optometrist the exclusive right to practise.

Although the Board must have been disappointed in the failure of the Act to entirely prohibit mail-order prescribing, it lost no time in enforcing the provisions which survived. In a series of disciplinary hearings, it erased many employees of these firms from the Register, and most of the expulsions were upheld by the courts. In *Re Hayward et al*[26] the Court upheld the Board's right

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[20]*Globe*, Toronto, March 26, 1930.

[21]S.O. 1931, c. 45. The Bill was identical to that of 1930, except for the omission of the offence found in the original Act of peddling glasses door to door.

[22]One mail-order representative pointed out at this time that there were 600 registered optometrists of whom 40 per cent had taken the prescribed course. *Globe*, Toronto, March 13, 1931.

[23]*Ibid.*

[24]The Committee also amended the Act so that the Board's disciplinary power would extend only over those entered on its Register.

[25]*Globe*, Toronto, March 25, 1931.

[26][1934] O. R. 133.

to include fraudulent advertising as a type of "improper conduct" for which it might discipline, and in *Re Ashby*[27] it was held that the Board could find that the employees of a company could be held to be "particeps criminis" in its advertising. The Board also sponsored prosecutions of companies that practised optometry without having a registered optometrist in charge.[28]

At the same time the Board appeared to be using its influence and perhaps its disciplinary powers to ensure that a high price was paid for glasses. In one speech in the Legislature, Mr. Mitchell Hepburn alleged that opticians were charging six or seven times the value of the spectacles. He said, "The Board have eliminated competition entirely. One optometrist told me that he could sell glasses and still make 100 per cent profit, but he didn't dare or he'd lose his certificate."[29] A. G. Roebuck told the story of a sixty-two-dollars-a-month clerk who could not afford to buy the glasses she needed, since she could not obtain a price of less than thirty dollars.[30]

Thus, widespread opposition to the profession was growing on several grounds; and, indeed, the Board seemed more concerned with the welfare of the profession than with that of the public. The Opposition leader, Mitchell Hepburn, introduced a Bill to repeal the Optometry Act in 1933,[31] but it was allowed to lapse. When he came to power, however, the optometrists were one of his first targets. In 1936 he repealed the Optometry Act[32] as the opening of his campaign "to curb any organization or profession that might be operating in restraint of trade". At the same time he announced that new legislation would be introduced to preserve what was best in the old Act, "including that section which was aimed at eliminating the travelling spectacle salesman".[33]

The new Optometry Act was introduced later in the same session.[34] This measure provided for the profession to be governed by a Board to be appointed by the Lieutenant Governor in Council.[35] The Board was to have power to make regulations concerning registration and education, although these regulations could be repealed or amended at any time by the Lieutenant Governor. Otherwise, the educational and registration requirements were the same as under the old Board. Disciplinary powers were considerably curtailed, being limited to suspending or

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27[1934] O. R. 421.

28See *R. v. Rithholy Optical Co. Ltd.* [1935] O. W. N. 69. This company had no registered optometrists in charge of its business because they had been deprived of their licences by the Board.

29*Globe*, Toronto, April 2, 1936.

30*Globe*, Toronto, April 2, 1936.

31(1933) Fourth Session of the Eighteenth Legislature of the Province of Ontario, Bill 82.

32*Globe*, Toronto, April 2, 1936.

33*Ibid.*

34S. O. 1936, c. 46.

35The Bill's sponsor, A. G. Roebuck, announced that he had informed the members of the old Board that none of them would be re-appointed.

revoking the licence of anyone convicted of an offence involving fraud in the practice of optometry. The prohibitions against false or misleading advertising, and the mail-order sale of spectacles were omitted, although the prohibition against door-to-door sales was reinserted. The exceptions from the Act remained the same, except that a specific provision was added, allowing the advertising of the price and terms of sale of glasses.[36]

Another change in government in 1944 brought the Optometrical Board more power as a result of a campaign promise. Before the election, Mr. G. Drew had written to the Optometrists' Association, promising them some reform of the Act. In keeping with this principle, Mr. D. Porter, a Cabinet member, introduced a Bill giving the Board greater disciplinary powers, but stated that it was not to be regarded as a government measure. There was a good deal of opposition to the Bill on the grounds that it was a payment of a campaign promise, and that it would restore to the optometrists a power that they had earlier abused. As late as its third reading, the Liberals attempted to defeat the measure by moving its postponement for six months; but in spite of all their efforts, it was passed. The Act[37] provided that the Board could suspend or revoke a licence if the registrant had been found guilty of "disgraceful conduct". Such a finding would be made at a hearing where both sides would have an opportunity to be heard, and an appeal from the Board's decision could be made to a Judge of the Supreme Court. The Board was to declare by regulation what was to be considered disgraceful conduct. The Board could also make regulations concerning advertising, including the price and terms upon which glasses could be sold.[38]

One further attempt was made to nullify this Act. In 1945 Mitchell Hepburn introduced a Bill which would repeal the power to regulate advertising,[39] but proceeded no further than its introduction. Opposition to the Act did not cease, however, for the debate over a Bill introduced by the government in 1946 still centred around the 1944 Act.[40] When asked whether regulations had been passed, Hon. M. Kelly replied that the Board and the Council had been unable to agree on any regulations as yet. The Opposition replied that this failure showed that the original objections to the measure were well founded.[41] In fact, it was not until 1950 that

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[36]Concomitant to this provision was a section specifically prohibiting the Board from regulating the price of glasses or examination fees.

[37]S. O. 1944, c. 45.

[38]The provision in the 1936 Act which excepted such advertising from the provisions of the Act was repealed. The clause that forbade the Board to interfere with pricing was retained, however.

[39](1945) Second Session of the Twenty-First Legislature of the Province of Ontario, Bill 60.

[40]S. O. 1946, c. 68. This Act merely altered the date in the grandfather clause on which one had to be practising to receive a certificate of exemption from November 1, 1939 to April 8, 1936.

[41]Debates of the Legislature of Ontario, March 26, 1946.

regulations defining unprofessional conduct were published.[42] According to these regulations, conviction of a crime affecting fitness to practise was to be considered disgraceful, as was the use of certain occupational designations such as "Doctor" and "Eye Specialist". Indeed, the regulations specifically forbade the use of any description other than "Optometrist" or "Optician", and also limited the methods by which a practitioner could describe his practice. For example, he could not use such terms as "Better Vision Institute", or "Eye Clinic".[43]

Seven more years passed before any regulations governing advertising were published.[44] They were aimed at ensuring that all advertising concerning glasses would disclose full information regarding price and that there be no hidden charges. Each advertisement showing glasses would have to contain the name of the optometrist or optician publishing it. If the price of the spectacles was mentioned, then the advertisement must state the fees for testing eyes and prescribing glasses, as well as any amount that would be charged for fitting; and these charges must be set out in the same size and style of type.

As the Board gained more power to regulate the practice of optometry, optometrists were seeking the power to elect the members of the Board. In 1951 an Act was passed that might have accomplished this end.[45] It provided for the creation of a Board of Directors in optometry which would take over the functions of the Board of Examiners. This Board was to consist of nine optometrists and three opticians, and was to be appointed or elected as later regulations would prescribe.

This Act was never proclaimed in force, however, probably because a dispute had arisen between the optometrists and opticians, the latter feeling that they ought to be allowed a greater voice in governing their affairs.[46] By 1961 it was apparent

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[42]C.R.O. 1950, 314.

[43]In 1963 these regulations were amended to provide that the only acceptable designation was the title "optometrist", plus academic degrees. In addition, it would be considered unprofessional to assist any unregistered person to practise or to split fees with any person other than a patient or employer. (O. Reg. 166/63.) In 1966 O. Reg. 299/66 added certain other aspects to professional misconduct. These were mainly informational offences, such as authorizing false or misleading statements or withholding information that ought to be disclosed. In addition, it would be considered unprofessional to prescribe for a patient without using the proper clinical procedures to determine the error to be corrected. Proper records of such procedures also must be kept.

[44]O. Reg. 187/57.

[45]S.O. 1951, c. 63.

[46]The first mention of this split within the profession was made by Dennison during the debate on the Bill. He felt that the opticians had not been properly consulted regarding the measure, citing a story in the *Toronto Daily Star* for support. (Debates of the Legislature of Ontario, April 3, 1951.) The Minister of Health, however, assured the Legislature that the Bill had been approved by both groups. (Debates of the Legislature of Ontario, April 4, 1951.)

that the two groups would not come to any agreement; therefore, two Acts were passed, giving each group its own governing body.[47]

Once the dissenting element of the opticians had been removed, there was no bar to setting up a representative Board to govern the optometrists, and this was done at the next Session.[48] This Act created a College of Optometry, of which all registered optometrists would become members. The College was to be governed by a Board of Directors, which was to be elected according to the method set out in the by-laws.[49] All by-laws passed by the Board had to be ratified by the College at a general meeting; and in addition, a copy of the by-law was to be mailed to each member. The Board could also make regulations in the same manner as the old Board of Examiners, with the approval of the Lieutenant Governor in Council, regarding education, registration and discipline.

Registration of new members continued to be based on graduation from a recognized school of optometry, together with pass standing in the registration examinations set by the Board. For the first time, legislative recognition was given to the school of optometry, maintained by the Board. The Board was given power to appoint a Dean, who in turn had power to govern the school, including the staff and students therein. It was the Board, however, which was to set the fees. The Board also retained the power to make an agreement with any other educational institution to establish a course in optometry.[50]

As in most of the professions, the Act provided that registration must be renewed annually.

The definition of those who might sell glasses without being registered under the Act remained substantially the same, but a further step in controlling the "self-prescribed" sales was taken. Retail merchants could still sell glasses to be chosen by the customer, but the Lieutenant Governor in Council could pass regulations governing both the terms of sale and the type of glasses that could be sold. However, no such regulations appear to have been made.

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[47]S.O. 1960-61, c. 73. The sole change in the Optometry Act was the removal of the word "optician" wherever it appeared.

The removal of opticians from the purview of the Act necessitated new regulations to control advertising by optometrists. Such regulations were published in 1963 (O. Reg. 166/63) and were similar to those governing other professions. Optometrists were limited to using professional cards, appointment cards, reminder cards, and announcements concerning changes in the practice. However, if an optometrist carried on any other business, such as that of an optician, these regulations did not govern his mode of advertising in that area.

[48]S.O. 1961-62, c. 101.

[49]Until the first election, the members of the Board of Examiners were to act as the Board of Directors.

[50]This provision was utilized in 1967 when agreement was made with the University of Waterloo to set up a Faculty of Optometry.

Ophthalmic Dispensers

As the functions of the optometrist and optician became separated, a dispute arose between the groups as to the representation to be given the opticians in their joint governance. The breach became so wide that finally it was decided that each should have its own governing Board.

In 1961 an Act was passed which separated the opticians — or ophthalmic dispensers, as they preferred to be called — from the optometrists.[51] This Act defined an ophthalmic appliance as spectacles, lenses, artificial eyes, or any device used for the aid of correction of visual or oracular anomolies of the eyes, and ophthalmic dispensing as making, fitting and interpreting prescriptions for the above appliances. Registration under the Act conferred the privilege of being able to dispense ophthalmic appliances on the prescription of a doctor or optometrist. In addition, the registrant could supply duplicates or replacements on his own account. Finally, registration conferred the exclusive right to use the title "ophthalmic dispenser" or "optician".

Several groups were excepted from the prohibitions under the Act, including, of course, doctors and optometrists. In addition, a retail merchant could practise ophthalmic dispensing, if a registered optician were in charge of the practice. Moreover, the Act did not affect the sale of coloured, industrial, or other non-corrective glasses. The next year the Act was amended to provide for the sale of self-prescribed glasses by retail merchants in accordance with regulations made by the Lieutenant Governor in Council.[52]

The Act provided for the appointment of a five-man Board of Ophthalmic Dispensers to be appointed by the Lieutenant Governor in Council. The Lieutenant Governor could provide also that the Board be elected from among the registered opticians. If the latter course were chosen, the power of appointing the Board would be lost.

The function of the Board was to administer and enforce the Act. By by-law, it could govern its own procedure, the appointment of teachers, and agreements with educational institutions to give courses in ophthalmic dispensing. In addition, with the approval of the Lieutenant Governor in Council, it could make regulations concerning educational qualifications for registration, registration, cancellation, and the definition of unprofessional conduct.

Every optician licensed under the Optometry Act was entitled to registration under the new Act, as was anyone who was certified by an ophthalmologist to have

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[51]S.O. 1960-61, c. 72.
[52]S.O. 1961-62, c. 100.

practised ophthalmic dispensing in Ontario for three years.[53] Otherwise, registration was dependent upon passing the Board's examinations,[54] after completing an approved course in ophthalmic dispensing, plus one year's practical training in Canada with an ophthalmic dispenser or optometrist. As an alternative to passing the course, registration was available to the applicant who passed the examination, if he had undergone three years of practical training (one year in Canada) under the supervision of a doctor, wholesale optical company, ophthalmic dispenser or optometrist. The Register itself was to contain the names of all ophthalmic dispensers, plus their place of employment.

The Board could suspend or revoke the licence of a registrant whom it found guilty of unprofessional conduct, fraud or misrepresentation. In 1961 regulations were passed which defined unprofessional conduct as procuring registration by fraud or misrepresentation, certified mental or physical incapacity, or incapability due to the use of drugs or alcohol.[55] Such disciplinary action must be preceded by notice to the offender and a public hearing to determine guilt. An appeal from the Board's decision could be made to a County Court judge, who would hear the matter by way of trial *de novo*.

Most of the changes made in the original Act were concerned with registration. In 1962 an Act was passed which authorized the Board to set up a Special Register, and to make regulations concerning who should appear on it and how such persons might practise. No such regulations have yet been passed.[56]

The next year the Act was amended to repeal the provision that would allow registration after three years' practical experience, so that all applicants would be required to undergo an academic course in ophthalmic dispensing.[57]

By 1965 it was decided that this was an impossible demand, and the requirements for admission to the licensing examination were changed to include — as well as an academic course — three years of practical training taken in conjunction with a home study course administered by the Board.[58] Finally, the Board could admit to the examination anyone whom it felt had equivalent qualifications, provided that these included one-year's practical experience in Canada under the supervision of a doctor, wholesale optical company, ophthalmic dispenser or optometrist.

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[53]Since doctors were exempt from the provisions of the Optometry Act, they were at liberty to train their own ophthalmic dispenser, in the same manner as they can dispense drugs through employees who are not pharmacists. This provision would allow those so trained to be registered without writing examinations. This provision was to remain in effect for only one year, however.

[54]According to regulations published in 1961, these examinations were to include written questions on ophthalmic dispensing and manufacturing, as well as ocular examination on lenses, and the interpretation of prescriptions. Finally, a practical demonstration would be required.

[55]O. Reg. 376/61. In 1965 the regulations were amended to include a criminal conviction affecting fitness to practise as a type of unprofessional conduct.

[56]S.O. 1961-62, c. 100.

[57]S.O. 1962-63, c. 100.

[58]This course was prescribed in O. Reg. 248/65.

Chapter 7 Drugless Practitioners

Introduction

Since the use of drugs was given such emphasis in the definitions of "practice of medicine", it is not surprising that "fringe" practitioners fell to using drugless types of cures on those who came to them. This group included many different kinds of practitioners, most of whom had some training and many of whom, such as naturopaths and osteopaths, practised a healing art accepted in other parts of the world. In Ontario, however, the medical profession refused to accept them as colleagues, and professed to find them a threat to the health of the public. They felt that such people should be prohibited entirely from practising, unless they had also completed an orthodox medical education. When it became apparent that these groups would not impose such standards, the medical profession began to press for legislation that would govern their conduct and limit their practice.

On the other hand, several of the drugless groups, notably the osteopaths and chiropractors, felt that they practised an art that was so important to the public that they should be protected by legislation that would define their area of practice and allow them self-government within that sphere. Both these groups presented Bills to the Legislature that would have created professional Colleges to govern them.[1] The measures were almost identical and closely followed the Medical Act. They provided for the incorporation of certain named persons into a College, the membership of which was to consist of all those who were registered by it. A Board was to be elected from among the members to manage its affairs. One of its duties was to appoint a Board of Examiners to conduct qualifying examinations for those who sought registration. Candidates who wrote the examinations must have certain educational qualifications.[2] Provision was made also for the registration of existing practitioners without examination.[3] Registration was to be renewed annually, and provisions similar to those in the Medical Act governed erasure where there was default in payment of the annual fee. Both Bills also incorporated the disciplinary procedure found in the Medical Act, with parallel provisions granting privileges

[1](1910) Second Session of the Twelfth Legislature of the Province of Ontario, Bill 47, to Incorporate the Osteopathic College of Ontario. (1915) First Session of the Fourteenth Legislature of the Province of Ontario, Bill 29 "to incorporate the College of Chiropractic for Ontario".

[2]Both groups required graduation from an approved school offering a four-year course; but the osteopaths were more severe, in that they required junior matriculation for entrance to the school.

[3]Once again the osteopaths were more severe in their requirements. All chiropractors practising at the time the Act was passed would be registered; whereas practising osteopaths would have to show that they met the educational requirements set out for new registrants.

and creating offences. Thus only registered osteopaths could practise osteopathy and only chiropractors, chiropractic. It would be an offence for unregistered persons to practice, to use the professional titles provided, or to use any designation that would imply registration.

Neither Bill was passed, however, since the government was opposed to extending "close corporation" privileges to new groups.[4] Its reluctance was reinforced by the opposition of the medical profession.[5]

The first attempt at compromise within these groups was made in the Medical Act of 1923, which provided for registration of drugless practitioners according to regulations made by the Lieutenant Governor in Council. Since this solution never really satisfied the doctors — because the drugless practitioners virtually ignored it — and since the Lieutenant Governor never made any regulations, it is not surprising that the solution was found to be unworkable. The provisions in the Medical Act were repealed and replaced by the first Drugless Practitioners Act.[6]

This measure established a Board of Regents, to be composed of five or more men appointed by the Lieutenant Governor in Council. The Board had the power to govern the practice of drugless practitioners[7] in Ontario by means of regulations, which, of course, had to be approved by the Lieutenant Governor in Council. These regulations could classify the systems of treatment used by the drugless practitioners and specify which treatment each person registered might follow. By regulation the Board could set up a register and prescribe the qualifications of persons to be registered in each class. It also could provide for the discipline of the registrants, including the cancellation or suspension of registration, if a practitioner were found to be incompetent, ignorant, or guilty of some misconduct.[8] Finally, the Board could designate the manner in which any class of drugless practitioner might describe their qualifications, provided that the designation was not forbidden by the Medical Act. The Board, too, could prohibit any designation it considered misleading.

Only those registered under the Act would be permitted to practise according to their classification, or to use the designation allotted to them. Other persons so practising would be guilty of an offence punishable in the first instance by a fine and, if repeated within two years, by imprisonment.

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[4]*Globe*, Toronto, March 17, 1915.

[5]In 1938 a Bill was presented (No. 27) that would have permitted osteopaths, chiropractors and drugless therapists to use the title "Doctor". This Bill did not reserve the approval of the Private Bills Committee and was withdrawn.

[6]S.O. 1925, c. 49.

[7]The Act defined "drugless practitioners" as "every person who practises or advertises, or holds himself out in any way as practising the treatment of any ailment, disease, defect or disability of the human body by manipulation, adjustment, manual or electrical massage or by any similar method".

[8]In 1962 the power to regulate advertising was added. S.O. 1961-62, c. 36.

The Act specifically stated that it did not authorize anyone not otherwise authorized to use drugs or to practise surgery or midwifery.

Since such a broad definition was given to the phrase "drugless practitioner", certain exceptions had to be made in the operation of the Act. These included nurses acting under the direction of a doctor, first aid in the case of emergency, and those who treated illness by spiritual means as an exercise of religious freedom. The first regulations under the Act were published on January 13, 1926.[9] Five classifications of drugless practitioner were set out and defined: chiropractors, chiropodists, drugless therapists, masseurs, and osteopaths.[10] Anyone who was over twenty-one years of age and of good character could register in any of the classifications in which he was qualified. Part A of the section on registration was the grandfather clause covering those who were practising on January 1, 1926. Osteopaths alone were required to pass an examination held by the Board. Practitioners in other classifications could be registered if they could satisfy the Board that their education and practical experience qualified them to practise. Finally, practising osteopaths, chiropractors and chiropodists were entitled to registration if they had graduated from an approved school.

In addition, those presently attending schools of chiropractic or drugless therapy were entitled to be registered on graduation, if they passed the qualifying examinations held by the Board.[11] All others who wished to be registered had to complete certain educational requirements and, in the case of osteopaths, chiropractors and drugless therapists, pass qualifying examinations set by the Board.[12]

Each registrant was entitled to a certificate of registration which was to be renewed annually. A section of the regulations provided that the Board might suspend or cancel the certificate of a practitioner if, after due inquiry, it found him guilty of incompetence, misconduct or breach of the regulations.[13] The same regulation also restricted each registrant to advertising his occupation by the terms designated in his certificate.

These regulations remained in effect until they were revised in 1944. At

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[9]*Ontario Gazette,* Vol. 59, part 1, p. 77.

[10]With the exception of masseurs, each classification was defined as giving treatment by diagnosing or giving advice as to the patient's ills, using the methods peculiar to that classification. Masseurs were defined as those who administered certain forms of treatment, but who did not diagnose or prescribe.

[11]In 1927 a similar privilege was granted to those who had been students at osteopathic colleges on January 1, 1926.

[12]The educational requirements were as follows:

1) Osteopaths: Junior Matric and graduation from an approved college.
2) Chiropractors and drugless therapists: Grade 10 and graduation from an approved college.
3) Masseurs: Grade 10 and two-year course.
4) Chiropodist: graduation from an approved college.

[13]O. Reg. 2114/44.

that time the classifications were amended to include physiotherapists.[14] In addition, a further division was made among the classifications. Chiropractors, drugless therapists[15] and osteopaths were designated "major" classifications,[16] while physiotherapists and masseurs were called "minor". Those engaged in the minor classifications were not to undertake any treatment except upon the prescription of a medical doctor, osteopath, chiropractor or drugless therapist. These prescriptions were to be kept on file, except where the masseur or physiotherapist was working in the employ of one of the above. Finally, these two groups were specifically prohibited from attempting to make any adjustment of the bony structures of the human body.

The regulations also set new educational qualifications and provided for qualifying examinations in all classifications.[17] Provision also was made for the Board to enter into agreements concerning reciprocal registration.

The regulations concerning occupational designations were clarified by the express provision that the words "drugless practitioner" were not sufficient; the classification on the registration certificate must be used. The same regulation also limited advertising to statements of name, address, office hours, professional title, and type of services rendered, although other advertisements could be published with the approval of the Board. Any fraudulent or distorted statement would be considered misconduct.

Finally, the regulations exempted athletic trainers from its provisions, provided that their services were given only to the members of the sporting club employing them.

The drugless practitioners were much more willing to abide by these provisions than by the earlier section of the Medical Act. In 1934, however, they sponsored a Bill which they felt would make this measure more acceptable.[18] They considered that the Board should be composed of men who were registered drugless practi-

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[14]Physiotherapists were defined in a manner analagous to masseurs, in that the profession included certain methods of treatment, but excluded the right to diagnose or prescribe.

[15]The definition of drugless therapists was amended to include those trained in naturopathy.

[16]Chiropodists were not included in this regulation, since an Act governing them was passed in the same year.

[17]The new educational requirements were as follows:

1) Osteopaths: Junior matriculation, two years of college, plus graduation from a professional college with a four-year course.
2) Chiropractors or drugless therapists: Junior matriculation plus graduation from an approved professional college with a four-year course.
3) Physiotherapists: Junior matriculation and graduation from a professional college offering a two-year course.
4) Masseurs: lower school examinations and graduation from professional college offering a nine-month course. A registered nurse was entitled to be registered as a masseur without further training or examination.

[18](1934) Fifth Session of the Eighteenth Legislature of the Province of Ontario, Bill 86.

tioners, and that fines recovered from prosecutions under the Act should be paid to the Board. The major change sought was to free occupational designations from the prohibitions in the Medical Act against the use of certain titles, especially that of "Doctor". They could find no support in the Legislature, however, and the Bill was ultimately withdrawn.

In 1950 the Act was amended to provide that the Board could make regulations concerning fees for examination and registration, and also for annual renewal registration. Further, the Board was given power to hire necessary staff and to pay its expenses.[19]

The regulations set by the Board were used to govern different classifications that differed widely in skill, education and function. For example, osteopaths received a near equivalent to a full medical education, while a masseur could be trained by a correspondence course. Chiropractors were anathema to the medical profession, while physiotherapists were considered an integral part of the medical team. Clearly internal difficulties would arise among the members of the Board of Regents, as well as antagonisms among the various classifications.[20] This situation was resolved by passing an Act in 1952 that provided that the Lieutenant Governor might appoint a Board of Directors which would govern one classification only.[21] Such classifications were to be determined by regulations made by the Lieutenant Governor in Council. When such a Board of Directors was appointed, the Board of Regents ceased to act with respect to that class, and the Board of Directors would have the same power to make regulations concerning its classification as had the Board of Regents.

Under this Act, Boards of Directors were established for all groups except drugless therapists. This group continues to be governed by the 1944 regulation.

Masseurs

New regulations made by the Board of Governors for masseurs were published in 1955.[22] They provided first of all that all those registered under the previous regulations should be registered automatically without fee. In addition, masseurs registered in jurisdictions outside Ontario might be registered in Ontario if the foreign jurisdiction extended the same privileges to Ontario masseurs. Otherwise,

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[19]S.O. 1950, c. 17.

[20]At this time the Board of Regents consisted of two osteopaths, two chiropractors, one physiotherapist, one masseur, and one naturopath. There were 100 osteopaths registered, 600-700 chiropractors, 100 physiotherapists, 500-600 masseurs, and an unspecified number of naturopaths, 85 per cent of whom were registered also as chiropractors. These figures were given by the Minister of Health during the debate on the 1952 Act. Debates of the Legislature of Ontario, April 4, 1952.

[21]S.O. 1952, c. 25.

[22]O. Reg. 12/55.

registration was based on passing examinations set by the Board.[23] Registration was made renewable each February and lapsed in default of payment of the annual fee. The defaulter could be reinstated, however, on payment of arrears plus a fee.

The 1955 regulations provided that those who wished to write the qualifying examinations would have to have junior matriculation, and have completed a course that both gave instruction in certain subjects and provided clinical experience. It was soon found that the educational standards were too high, and in 1959 the preliminary requirements were reduced to the Ontario intermediate certificate or the equivalent.[24]

The regulations also provided for the discipline of registered masseurs. Registration could be cancelled or suspended for a period up to thirty days if a masseur were found guilty of misconduct, ignorance or incompetence. This penalty could be imposed only after a hearing, at which the defendant had a chance to be heard, give evidence, and cross-examine those giving evidence against him. He also had the right to be represented by counsel. He was to be given ten days' notice of the hearing, and the notice had to set forth details of the charge and evidence suporting it.

The Board could also appoint an inspector to investigate written complaints and report on their justification.

Finally, the regulation provided that a masseur should use no occupational designation other than masseur, but this restriction was removed in 1963.[25]

Physiotherapists

A Board of Directors in Physiotherapy was appointed and prepared regulations that were published in 1955. As in all the other classifications, persons who had been registered under the prior regulations were entitled to registration without fee. Several types of qualifications served as a basis for registration without examination. These were graduation from the diploma course in physiotherapy at the University of Toronto or a similar course at any other university, or membership in the Chartered Society of Physiotherapy in the United Kingdom.

Reciprocal registration was available to those who were registered in jurisdictions extending the same privilege to Ontario registrants. All other applicants would have to write the qualifying examinations. Those who wished to try these

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[23]The original regulation provided that an applicant for registration must be at least twenty-one years of age, but this requirement was revoked later in the same year by O. Reg. 164/55.
[24]O. Reg. 157/59.
[25]O. Reg. 49/63.

examinations must have passed nine Grade 13 papers and completed a course in physiotherapy lasting at least 2,500 hours. Registration was to be renewed annually, and the usual provisions concerning default applied.

The regulation contained disciplinary provisions identical to those governing masseurs. It was provided that "Physiotherapist" was the only proper designation for registrants. This designation must appear where the practice was called a "clinic", "health institute", or other designation. In 1957[26] the provision was amended to provide that a physiotherapist might describe his occupation in terms of the methods of treatment that he was entitled to use under the regulations (such as heart therapist), but no designation could be used that would imply any other skill.

The same amendment provided that when a registrant had notified the Board that he had ceased to practise, he could be re-registered at any time by paying the renewal fee for that year.

The regulation was revised in 1961.[27] Generally, however, the provisions remained the same. One change was that members of the Canadian Physiotherapy Association who had passed the qualifying examinations or their equivalent were entitled to registration, whether or not the educational qualifications were met. The course required for these qualifications was increased to 2,600 hours.

Chiropractors

The regulations published by the Board of Directors of Chiropractic in 1955[28] followed the same general pattern as those governing masseurs and physiotherapists.

The disciplinary and renewal of registration clauses were identical, and chiropractors were limited to describing themselves as chiropractors. There were the usual grandfather and reciprocity clauses, providing for registration without examination. Those who wished to qualify for the licensing examination must have passed four Grade 13 papers and completed a four-year course at an approved chiropractic college. In 1961 the requirements were increased to provide for the holding of a Grade 13 diploma.[29] In 1965 an amendment provided that those who had passed the qualifying examinations of the National Examining Board of the Canadian Chiropractic Association could be registered without writing the Ontario examinations.[30]

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[26]O. Reg. 270/57.
[27]O. Reg. 377/61.
[28]O. Reg. 38/55.
[29]O. Reg. 336/61.
[30]O. Reg. 143/65.

Osteopaths

The final classification to have regulations passed by its Board of Governors in 1955 was the osteopaths.[31] This group was similar to the others in all but its educational requirements. Those wishing to write qualifying examinations in osteopathy must have completed two years of post-secondary education and also a four-year course in an approved College of Osteopathy.

The only other departure from the standard regulations was a provision that no member of the Board could serve as an inspector to investigate complaints of misconduct.

Chiropodists

The only group of healers to escape from the Drugless Practitioners Act to specific governing legislation of their own were the chiropodists.[32] In 1944 a Bill was introduced by a private member, Mr. Scott, with the consent of the government, that would provide a Board of Regents to govern the chiropodists in the same manner as the Board of Regents in drugless therapy.[33] In introducing the measure, Scott justified its separation from the other drugless cults as follows:

> At the present time, the chiropodists in Ontario are licensed under the Drugless Practitioners Act . . . , but since chiropody is not a drugless practice and is ancillary to medicine, it has been found that the chiropodists cannot be properly governed under the Drugless Practitioners Act, and the idea of this Bill is to enable them to set up a Board of Governors that will carefully control those who practise chiropody.[34]

The Bill established a Board of Regents appointed by the Lieutenant Governor in Council to govern the affairs of chiropodists in Ontario. The Board was given exactly the same regulatory powers of the drugless practitioners' Board of Regents to provide for registration, discipline and occupational discipline. It was made an offence for any unregistered person to practise chiropody; and as was the case with drugless practitioners, such an offence was punished in the first instance by a fine and then, if repeated within two years, by imprisonment. This Act also followed the drugless practitioners in excepting nurses, those rendering first aid, and religious healers from its provisions.

Although one of the justifications of the measure was that chiropodists were not drugless practitioners, the Act specifically prohibited registrants from administering or prescribing drugs to be taken internally, or from using any anaesthetic other than those applied externally to the skin.[35] The true meaning

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[31]O. Reg. 66/55.

[32]The chiropodists had sponsored a Bill in 1921 that would provide them with a governing body, but it was withdrawn without being debated.

[33]S. O. 1940, c. 11.

[34]Debates of the Legislature of Ontario, March 30, 1944.

[35]The original Bill permitted the use of local anaesthetics, but the section was altered to meet the objection of the doctors.

of this section was obscured, however, by the addition of a clause which provided that the above clause should not prevent their treating "morbid conditions of nails and skin, and resulting morbid conditions of subcutaneous tissues of the human foot". In a recent case, it was held that this last clause had precedence; and that if it was necessary to inject a local anaesthetic in providing such treatment, it could properly be done.

The first regulations under the Act were published in 1944.[36] They provided that any person registered as a chiropodist under the Drugless Practitioners Act on January 1, 1944, was entitled to registration upon payment of a fee. Otherwise registration was dependent upon passing the Board's examinations. Those who wished to write these examinations must give proof of good character, completion of Ontario junior matriculation or the equivalent, and graduation from an approved school of chiropody offering a course of a minimum 1,500 hours; or if graduating from a shorter course, must show five years' practical experience.

Registration had to be renewed annually, and each registrant was required to display his certificate at his place of business.

The regulations authorized the Board to inaugurate disciplinary proceedings upon receipt of a written complaint of misconduct or incompetence. Notice was to be given to the accused party, but the Board could proceed with the matter if he failed to appear at the time stated. The Board could suspend or cancel the practitioner's licence or impose conditions upon his right to practise.

The regulations also set out several actions that would be considered improper conduct. These included advertising fees and guaranteeing cures. In addition, no chiropodist was to offer money to a third party for procuring him clients, or to practise under any name other than his own. Finally, a chiropodist was to designate his profession by the term "Chiropodist" or "Podiatrist".

These regulations remained unchanged until 1955, when they were revised to increase the educational requirements and improve the disciplinary procedure.[37] Applicants who wished to write the licensing examination must show that they had passed nine Grade 13 papers and had passed a course in an approved chiropody school. Such schools were approved only if they offered a four-year course to be taken after passing Grade 13 or its equivalent, and if they had been accredited by the Council of Education of the Canadian Association of Chiropodists. In addition, each applicant must show three months' clinical experience under the supervision of a registered chiropodist and submit two character references.

The discipline procedure also was improved by the new regulations. They provided that the Board might appoint an inspector to investigate written

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[36] O. Reg. 222/44.
[37] O. Reg. 170/55.

complaints. Where a disciplinary hearing was to be held, ten days' notice was to be given to the person investigated, containing the charge against him and an outline of the evidence against him. Although the hearing could proceed in the absence of the accused, if he appeared he was to have the opportunity to call evidence on his own account and cross-examine those appearing against him He was also entitled to appear by counsel or agent.

Generally behaviour which was to be considered misconduct remained the same, but in addition a chiropodist was expected to confine his advertising to name, address, and telephone number in a uniform listing of chiropodists in directories. In 1958 a regulation was passed which made it unprofessional for a chiropodist to practise in the employment of a commercial business, or to appear to do so.[38]

The same regulation made provision for reciprocal registration of chiropodists from jurisdictions outside Ontario that would register an Ontario chiropodist without his undergoing examination.

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[38]O. Reg. 31/58.

Chapter 8 The New Paramedicals

Psychologists

During this century there have been many discoveries in the area of the healing arts, and new paramedical disciplines are constantly springing up to implement these advances. A situation has resulted where often it is not clear who is properly qualified to perform the new services. The problem stems not so much from the presence of quacks in any area, but from the fact that those who claim to be orthodox practitioners have varying levels of education. One such group, the psychologists, sought legislation to clarify the situation.[1]

The Psychologists' Registration Act provided for the appointment of a Board of Examiners in Psychology by the Lieutenant Governor in Council. It was to consist of five registered psychologists,[2] two of whom were to be engaged principally in teaching and two of whom were to be active in some other field. The Board was given the usual powers to make regulations with the approval of the Lieutenant Governor in Council concerning registration, examinations, discipline and its own management.

The prime function of the Board was to maintain a register of those psychologists who were qualified to practise. Registration was based on passing examinations set by the Board which could be written only after the candidate had received a doctoral degree in psychology from a university approved by the Board, and had an additional year's experience in the field. A grandfather clause was inserted to be applied if certain standards of education and practical experience were met: either a doctoral degree and two years of acceptable experience, or a master's degree in psychology and four years' experience.[3]

In 1965 an Act was passed authorizing the Board to maintain a temporary register on which those who had received their degree and were presently undergoing practical experience might be registered.[4] The same measure provided for registration without examination if the applicant had been certified or registered by some other Board, such as the American Board of Examiners in Professional Psychology, that demanded equivalent standards of education and experience.

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[1]The Psychologists' Registration Act, S.O. 1960, c. 90.

[2]The first or provisional Board, of course, need only have the qualifications to be registered.

[3]In 1963 the Act was amended to provide that where an applicant had what the Board considered to be the equivalent of a master's degree and the requisite experience, he might be registered. S.O. 1962-63, c. 112.

[4]S.O. 1965, c. 105.

The original Act also set out privileges granted to those registered under it. They alone were entitled to represent that they were psychologists — that is, use any title or description using the words "psychological", "psychologist", or "psychology"; any other person who did so was guilty of an offence.[5] The Act was also explicit concerning the limits within which a psychologist might practise in the healing arts. He could treat mental disorders only on prescription of, or in association with, a duly qualified medical practitioner, and he was not entitled in any way to engage in the practice of medicine, surgery or midwifery.

Finally, the Act provided that after a hearing the Board might refuse to register an applicant, when such registration would be liable to suspension or revocation. Where registration was refused, suspended or cancelled, an appeal lay to a Supreme Court judge. Regulations published under the Act[6] provided that the Board might cancel or suspend a certificate that had been procured by misrepresentation or fraud, or that was held by a registrant who was deemed physically or mentally incapable, was guilty of professional misconduct, or who had been convicted of a crime affecting the practice of psychology.

Radiological Technicians

Another aspect of the growth of medical knowledge was the invention of mechanical aids in diagnosis and treatment. This in turn led to the emergence of subsidiary occupations which dealt with one aspect of medical technology. At first, members of these groups usually were trained by individual practitioners or in uncoordinated courses set up by individual hospitals. As the limits of each occupation became defined, those employed in it set up organizations which in turn set educational and practical standards for future members. Then, as had the older professions, they began to seek legislation defining their area of the healing arts and the privileges of those who practised it.

The radiological technicians were the first group to achieve such legislation.[7] This registration Act provided for the appointment of a Board of Radiological Technicians by the Lieutenant Governor in Council. The composition of this Board reflected the part played by the voluntary associations in achieving standards for the profession, since four of the members were to be nominated by the Ontario Society of Radiological Technicians. The remaining members reflected the subordinate status of the group: all were doctors who were to be nominated by the OMA. Of these, two were to be radiologists and the third was to be a non-radiological member of the OMA Secretariat. The term of appointment

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[5]Medical practitioners and persons in government or university employ were exceptions to this general restriction.

[6]O. Reg. 276/60.

[7]S.O. 1962-63, c. 122. The Act defined a radiological technician as "a person who practises the technical aspects of the medical use of ionizing radiation, including Roentgen or x-rays, radium, radio-active isotopes and particles for diagnosis or treatment".

was two years, and members were eligible for reappointment. The Board could pass by-laws concerning the conduct of its affairs, its employees and their remuneration, and its financial affairs. It could also by law enter into agreement with any educational institution to give instruction and lectures to radiological students. In addition, the Board could govern certain other aspects of the profession by passing regulations subject to the approval of the Lieutenant Governor in Council. In this manner it could prescribe the qualifications for entrance into courses of training for radiological technicians, the holding of examinations for the graduates of such courses,[8] the registration and suspension of those who passed the examinations, and the definition of unprofessional conduct for the purposes of the Act. Finally, all fees payable under the Act must be established in the regulations. The interest of the medical profession in the standards set by the Board was recognized in a provision that allowed the Council of the Ontario College of Physicians and Surgeons to examine and study any proposed regulations for thirty days before they were submitted to the Lieutenant Governor. The Council could not alter or veto the draft, but it could make submissions to the government concerning it.

Registration was based on passing an examination set by the Board after completing an approved course of training. A grandfather clause provided that anyone who was an active or associate member of the Ontario Society of Radiological Technicians, or any person who had been practising as a radiological technician in Ontario for five years under the supervision of a qualified medical practitioner, could be registered without writing the Board's examinations.[9] In addition, if application were made within one year of the proclamation of the Act, a person practising in Ontario who had met the training and examination standards set jointly by the Canadian Society of Radiological Technicians and the Canadian Society of Radiologists was entitled to be registered without further training or examination.

The Register was to list all radiological technicians together with their place of business or employment. A certified copy of this Register was to be admissible as evidence of registration in any action. Each registrant was to receive a certificate of registration which was renewable annually.

The Board was also given certain disciplinary powers. It could revoke or suspend the registration of any radiological technician whom it found guilty of unprofessional conduct, incompetence, fraud, or misrepresentation in connection with his practice. Before any such decision could be made, notice of the charge must be given to the accused, and he would be given the opportunity of producing

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[8]This provision was inserted by the amending Act passed at the following Session. S.O. 1963-64, c. 98.

[9]The Act was amended in the following year to provide that those who based their qualifications for registration on five years' experience must also pass the registration examinations. S.O. 1963-64, c. 98.

such evidence or making such representations as he desired at a public hearing. At this hearing, the Chairman was to have all the powers of a Commissioner under the Public Inquiries Act. Any order could be later reviewed and altered by the Board. In addition, an appeal could be taken to a County Court judge in the county where the appellant practised, and the judge could hear and determine the matter by a trial *de novo*.

The Act provided for certification rather than licensing of radiological technicians.[10] Registrants were entitled to use the title "Registered Radiological Technician" and the abbreviation "R.R.T." If any other person used either of these terms or any other expression implying registration under the Act, he was guilty of an offence punishable by fine in the first instance and by possible imprisonment in later cases. Finally, a limitation period of one year from the termination of services was placed on actions brought against radiological technicians for malpractice or professional negligence.

The regulations passed under the Act were to come into effect on August 1, 1964. Those who wished to enter a training course must have a Grade 12 diploma, and approved courses must be based on the syllabus prepared by the Canadian Society of Radiological Technicians. On completion of the course the applicant would be eligible to write the examinations; and if he passed them, or the examinations supplementary to them, he would be registered.

Reciprocal registration was available to radiological technicians from outside the province, if they were registered in some other jurisdiction under similar regulations and had completed a course similar to that required in Ontario.

The regulations also defined "professional misconduct" as negligence in therapy or diagnoses that might lead to bodily harm, or conduct so disgraceful or improper that it be in the public interest to revoke or cancel registration.[11]

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[10]In spite of this, the original Bill provided that doctors and dentists be exempted from the Act. This provision was dropped when protests were made on behalf of chiropractors, who, it was argued, were as well able to use x-rays as either dentists or doctors. *Hansard*, March 20, 1963.

[11]O. Reg. 185/64.